



Office of Appeals  
U.S. Department of Housing and Urban Development  
Washington, D.C. 20410-0001

In the Matter of:

**Thomas Dunwoodie,**

Petitioner

HUDOA No. 11-H-NY-LL11  
Claim No. 7-805449920A

Thomas Dunwoodie  
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Kearny, NJ 07032

*Pro se*

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For the Secretary

**DECISION AND ORDER**

Petitioner was notified that, pursuant to 31 U.S.C. §§ 3716 and 3720A, the Secretary of the U.S. Department of Housing and Urban Development (“HUD”) intended to seek administrative offset of any federal payments due to Petitioner in satisfaction of a delinquent and legally enforceable debt allegedly owed to HUD.

On January 12, 2011, Petitioner made a request for a hearing concerning the existence, amount, or enforceability of the debt allegedly owed to HUD. The administrative judges of the Office of Appeals have been designated to conduct a hearing to determine whether the alleged debt is legally enforceable. 24 C.F.R. §§ 17.153. As a result of Petitioner’s hearing request, referral of the debt to the U.S. Department of the Treasury for administrative offset was temporarily stayed by this Office on January 13, 2011 until the issuance of a written decision by the administrative judge. 24 C.F.R. § 17.156.

**Background**

On April 8, 1993, Petitioner executed and delivered a Consumer Note (“Note”) to Federal Mortgage & Investment Corp., in the amount of \$15,000, which was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary’s

Statement (“Sec’y Stat.”), filed June 22, 2011, ¶ 2; Ex. A.) After default by Petitioner, the Note was assigned to HUD by ASMC Servicing LTD under the regulations governing the Title I Insurance Program. (Id. at ¶ 7; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD (“Dillon Decl.”), dated June 22, 2011, ¶ 3.)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains in default. The Secretary alleges that Petitioner is justly indebted to HUD in the following amounts:

- (a) \$4,392.32 as the unpaid principal balance as of May 31, 2011;
- (b) \$281.58 as the unpaid interest on the principal balance at 2.0% per annum through May 31, 2011;
- (c) \$0.00 as the unpaid penalties and administrative cost as of May 31, 2011; and
- (d) Interest on said principal balance from June 1, 2011 at 2.0% per annum until paid.

(Sec’y Stat. ¶ 8; Dillon Decl. ¶ 4.)

A Notice of Intent to Collect by Treasury Offset, dated November 22, 2011, was sent to Petitioners. (Sec’y Stat., ¶ 5; Dillon Decl., ¶ 5.)

### Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A provides federal agencies with the remedy of administrative offset of federal payments for the collection of debts owed to the United States Government. In administrative offset cases, Petitioner bears the initial burden of submitting evidence to prove that the debt is not past-due or legally enforceable. 24 C.F.R. § 17.152(b); *Juan Velazquez*, HUDBCA No. 02-C-CH-CC049 (September 25, 2003).

Petitioner contends that the debt no longer exists, having been discharged as part of a 2008 Chapter 13 bankruptcy proceeding before the U.S. Bankruptcy Court for the District of New Jersey. (Petitioner’s Letter, dated January 12, 2011.) As documentary evidence to support this assertion, Petitioner has filed copies of the following: *Schedule D: Creditors Holding Secured Claims* form that lists HUD as a secured creditor; a *Trustees Report of Receipts and Disbursements* that lists mortgage arrearages of \$5,394.20 as having been paid in full to HUD; and a *Discharge of Debtor Order After Completion of Chapter 13 Plan* issued U.S. Bankruptcy Court for the District of New Jersey. (Id. at pp. 6-9.)

The Secretary argues, however, that under 11 U.S.C. § 1322(b)(2), a bankruptcy plan may “modify the rights of holders of secured claims, *other than* a claim secured only by a security interest in real property that is the debtor’s principal residence[.]” (emphasis added). In this case, the Secretary maintains that HUD’s mortgage was collateralized by a lien on 175 Magnolia Avenue, the location identified in the bankruptcy proceedings as Petitioner’s residence. (Sec’y Stat., ¶ 13; Ex. E.) The Secretary concludes that the discharge of the debt would therefore have been precluded under the provisions of 11 U.S.C. §1322(b)(2). As support, the Secretary introduces documentary evidence that lists the total debt at \$9,697.40, of which \$5,394.20 is noted to be in arrearage. (Dillon Decl., Ex. A.) The Bankruptcy Court’s Final

Report and Account statement shows a payment to HUD of \$5,394.20, and the Secretary acknowledges that the arrearage was paid through the plan. (Sec'y Stat., ¶ 16; Dillon Decl., Ex. B.)


While the documents submitted by Petitioner show that a portion of Petitioner's arrearages to HUD were discharged in the Chapter 13 bankruptcy, they do not evidence discharge of the debt that is the subject of this proceeding. The only modification for debts secured by real property under the Bankruptcy Code is set forth at 11 U.S.C. § 1322(b) (5) in which it provides for "curing of any default within a reasonable time and maintenance of payments while the case is pending on any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due [.]". Such modification does not exist in this case. Here, the Note held by HUD required 180 monthly installments, beginning in May 1993. The 180<sup>th</sup> payment would therefore have occurred in May 2008. In the case at hand, the final payment to HUD under the Chapter 13 bankruptcy plan occurred on April 18, 2008. As a secured claim holder with a security interest in Petitioner's principal residence, only the arrearages due HUD could be restructured over the life of Petitioner's Chapter 13 bankruptcy plan.

As a result, there is no evidence that the Chapter 13 bankruptcy plan discharged the remaining debt that is the subject of this proceeding. Since the portion of the debt that was not in arrearage could not be modified or discharged by Petitioner's Chapter 13 bankruptcy, I find that the subject debt remains past due and is legally enforceable against Petitioner.

#### **ORDER**

For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative offset is **VACATED**. It is hereby

**ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative offset of any federal payments due to Petitioner to the extent authorized by law.

  
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Vanessa L. Hall  
Administrative Judge

August 18, 2011