



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

In the Matter of:

Lenita Garner,

Petitioner

HUDOA No. 11-H-NY-LL18
Claim No. 7-210067650A

Lenita Garner
101 Ravenwood Circle
Dickson, TN 37055

Pro se

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26 Federal Plaza, Room 3237
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For the Secretary

RULING ON SECRETARY'S MOTION TO DISMISS

Petitioner was notified by a Due of Process Notice, pursuant to 31 U.S.C. §§ 3716 and 3720A, that the Secretary of the U.S. Department of Housing and Urban Development ("HUD") intended to seek administrative offset by the United States Department of the Treasury of any Federal payments due to Petitioner to recover a claimed past-due, legally enforceable debt of Petitioner to HUD.

Petitioner filed a timely request to present evidence that the debt was not past-due or not legally enforceable. Pursuant to 24 C.F.R. § 17.150 et. seq. and § 20.4(b), the administrative judges of the HUD Office of Appeals are authorized to determine whether these debts are past due and legally enforceable. As a result of Petitioner's request, referral of the debt to the U.S. Department of the Treasury was temporarily stayed by this Office on February 11, 2011.

On February 25, 2011, a Motion to Dismiss was filed on behalf of the Secretary advising this Office that [t]he Secretary is dismissing his action to pursue administrative offset because it is the Secretary's policy not to pursue collection of a delinquent Partial Claim note when the FHA-insured primary mortgage was foreclosed upon." The Secretary further stated that he "has

confirmed that the property securing the Partial Claim note was foreclosed on August 2, 2007.” As support, the Secretary submitted a copy of the Declaration from the Acting Director of the Asset Recovery Division, HUD’s Financial Operations Center. (Motion to Dismiss, Ex. A.) On March 11, 2011, this Office issued an Order seeking clarification of the Secretary’s policy not to pursue collection of a delinquent partial claim when the FHA-insured primary mortgage on the property was foreclosed upon. On March 23, 2011, the Secretary filed a response in which he stated:

In instances where HUD has paid a Partial Claim, but continued delinquency results in the foreclosure of the primary HUD-insured mortgage, the Secretary’s policy is not to pursue collection of the Partial Claim (Subordinate) Note. This policy, however, does not apply to notes that are insured and subsequently held by the Secretary pursuant to Title I of the National Housing Act, specifically property improvement and manufactured home loans. (emphasis in original) (Secretary’s Statement in Support of Motion to Dismiss, “Statement for Mod,” ¶7.)

As evidence, the Secretary submitted a Declaration from the Director of the Asset Recovery Division of HUD’s Financial Operations Center along with a copy of a decision previously issued by this Office in which the departmental policy regarding HUD’s Partial Claim Programs was also addressed. (See Statement for MOD, Ex. C, *In re Paul Saia*, HUDOA No. 09-M-NY-AWG-142, p. 3 (October 16, 2009).)

However, unlike the facts in *Paul Saia* where the Department’s policy did not apply, the Department’s Partial Claims policy applies to the Petitioner in this case. The Secretary further states:

Petitioner, Lenita Garner, had a primary mortgage that was insured by HUD pursuant to Title II, Section 203(b) of the National Housing Act.

In or around May 2004, Petitioner went into default on her primary mortgage, and HUD paid a Partial Claim to her mortgage in the amount of \$4,855.26. In exchange for HUD’s payment, Petitioner executed and delivered a Subordinate (Partial Claim) Note to HUD. (A copy of the Subordinate Note is attached as Exhibit B.)

Subsequently, Petitioner went into default again on her primary mortgage, and the Lender foreclosed. Consequently, HUD will not pursue collection of the Partial Claim (Subordinate) Note since Petitioner lost her home due to the foreclosure of the primary insured mortgage note.

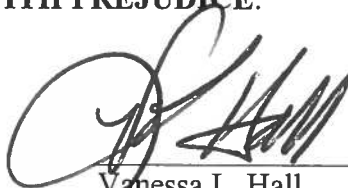
(Statement for MOD ¶¶ 8-11.)

Therefore, upon due consideration, the Secretary’s Motion to Dismiss is **GRANTED**. It is hereby

ORDERED that the Secretary shall not seek to collect the claimed debt of Petitioner by means of administrative offset of any Federal payment due Petitioner. It is hereby

FURTHER ORDERED that the stay of referral of this matter to the Department of the Treasury is made permanent.

This matter is **DISMISSED WITH PREJUDICE**.

A handwritten signature in black ink, appearing to read 'V. Hall', written over a horizontal line.

Vanessa L. Hall
Administrative Judge

March 25, 2011