



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

In the Matter of:

Janet Kay,

Petitioner

HUDOA No. 11-H-NY-LL39
Claim No. 7-21006851-0

Janet Kay
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New Port Richey, FL 34653-4432

Pro se

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For the Secretary

ORDER OF DISMISSAL

24 C.F.R. § 17.152(b) provides that failure by the Petitioner to submit evidence within 65 calendar days from the date of the Department's Notice of Intent will result in a dismissal of petitioner's request for review by the HUD Office of Appeals.

In Petitioner's Hearing Request, Petitioner stated that the debt does not exist and explained:

The subordinate note was tied with the first mortgage [sic][.] We had a second mortgage [sic] with Beneficial[.] The subordinate note was with the First. Someone has the money[,] not us[.] [W]e walked away with \$2,699.37. The reality [sic] walked away with or about \$8,000.

(Pet'r's Hr'g Req., filed June 28, 2011.)

As support for her argument, Petitioner filed a Notice of Voluntary Dismissal and Release of Lis Pendens ("Notice of Dismissal"). (Pet'r's Hr'g Req., Attach.) The Notice of Dismissal stated that First American Mortgage Trust voluntarily dismissed its complaint for

foreclosure on Petitioner's property. (*Id.*) Petitioner also filed a copy of a sale advertisement for her house as well as a HUD-1 Settlement Statement as proof that her house was sold. (*Id.*) Therefore, Petitioner states that all parties owed money in connection with the sold property were paid in full.

In order for Petitioner to avoid liability for the debt, there must either be a release, in writing, from the lender specifically discharging Petitioner's obligation, or valuable consideration paid to HUD, or to its designee, that would indicate an intent to release. *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (Jan. 30, 2003); *Cecil F. & Lucille Overby*, HUDBCA No. 87-1917-G250 (Dec. 22, 1986); *Jesus E. & Rita de los Santos*, HUDBCA No. 86-1255-F262 (Feb. 28, 1986). Petitioner has failed to provide any evidence to establish the existence of a valid release that releases Petitioner from her legal obligation to pay the alleged debt.

Even if Petitioner's lender was paid in full, HUD is still entitled to pursue collection efforts against Petitioner. In the instant case, HUD acted as an insurer of Petitioner's primary mortgage. Under Florida law, equitable subrogation "is designed to apply where the claimant satisfied an obligation of another and then stands in the shoes of the satisfied creditor." *Tribeca Lending Corp. v. Real Estate Depot, Inc.*, 42 So. 3d 258, 262 (Fla. Dist. Ct. App. 2010). As a result, guarantors like HUD are permitted to pursue a separate action on their note after the primary lender's claim is extinguished. *Lani B. Park*, HUDBCA No. 99-A-CH-Y302, at *5-6 (May 25, 2000.) Satisfaction of the lender's mortgage through the sale of Petitioner's property therefore does not prevent HUD from initiating collection efforts against Petitioner personally based on the obligations in the Note. See *Kimberly S. (King) Thede*, HUDBCA No. 89-4587-L74 (April 23, 1990) (citing *Alan Juel*, HUDBCA No. 87-2065-G396 (Jan. 28, 1986)). Therefore, absent evidence of a release in writing, I find that Petitioner is legally bound as a matter of fact and law by the terms of the Note, and, I further find that the Secretary has the right to proceed against Petitioner to collect this outstanding obligation.

Furthermore, because Petitioner has failed to comply with any of the Orders issued by this Office, I also find that Petitioner's non-compliance to the Orders issued by this Office provides a basis for rendering a decision against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations. Rule 26.3 of Title 24 of the Code of Federal Regulations provides:

If a party refuses or fails to comply with an order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including a determination against the noncomplying party.

Upon due consideration of Petitioner's failure to comply with 24 C.F.R. § 17.152(b) and Rule 26.3 of Title 24 of the Code of Federal Regulations, Petitioner's appeal is **DISMISSED** *sua sponte*. It is hereby

ORDERED that this matter be **DISMISSED WITH PREJUDICE**.



Vanessa L. Hall
Administrative Judge

October 27, 2011