



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

In the Matter of:

Debra Barfield,

Petitioner

HUDOA No. 11-H-NY-LL44
Claim No. 7-807337020B

DECISION AND ORDER

On July 25, 2011, Petitioner was notified, pursuant to 31 U.S.C. §§ 3716 and 3720A, that the Secretary of the U.S. Department of Housing and Urban Development intended to seek administrative offset of any federal payments due to Petitioner in satisfaction of a debt allegedly owed to HUD.

Petitioner requested a hearing to contest the existence, amount, or enforceability of the alleged debt. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed August 15, 2011.) The administrative judges of the Office of Appeals, in accordance with the procedures set forth at 24 C.F.R. §§ 17.152 and 17.153, have been designated to conduct a hearing to determine whether the alleged debt is past due and legally enforceable. As a result of Petitioner's Hearing Request, this Office stayed referral of the alleged debt to the U.S. Department of Treasury on August 16, 2011. (Notice of Docketing, Order, and Stay of Referral, 2, issued August 16, 2011.)

Background

On September 5, 2007, Petitioner executed and delivered to Domestic Bank a Note in the amount of \$16,886.00. (Secretary's Statement ("Sec'y. Stat."), ¶ 2, filed December 21, 2011.) The Note was insured against nonpayment by the HUD Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C § 1703. (*Id.*) Petitioner failed to make payments on the Note. (*Id.* at ¶ 3.) As a result of Petitioner's default, Domestic Bank assigned the Note to HUD under the regulations governing the Title I Insurance Program. (*Id.*)

HUD's attempts to collect the debt from Petitioner have been unsuccessful. (Sec'y. Stat., ¶ 4; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), dated December 15, 2011, ¶ 4.) The Secretary therefore contends that Petitioner is indebted to HUD in the following amounts:

- (a) \$13,709.72 as the unpaid principal balance as of November 30, 2011;
- (b) \$417.65 as the unpaid interest on the principal balance at 1% per annum through November 30, 2011;
- (c) \$880.92 as unpaid penalties and fees through November 30, 2011; and

(d) interest on said principal balance from December 1, 2011 at 1% per annum until paid.

(Sec'y. Stat., ¶ 4; Dillon Decl., ¶ 4.)

A Notice of Intent to Collect by Treasury Offset, dated July 25, 2011, was sent to Petitioner. (Sec'y. Stat., ¶ 5; Dillon Decl., ¶ 5.)

Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720, provides federal agencies with a means of collecting debts owed to the United States Government. Petitioner bears the initial burden of submitting evidence proving that the alleged debt is unenforceable or not past due. 24 C.F.R. § 17.152(b).

Petitioner does not dispute that the debt is past due. Rather, she asserts that the proposed offset will create significant financial hardship. (Pet'r's Hr'g Req., p. 1; Petitioner's Letter ("Pet'r's Ltr."), filed November 23, 2011.) She also argues that because the loan was used to install a metal roof on Petitioner's home, either liability for the debt should transfer to the primary mortgage lender, or the loan should be rolled into the primary mortgage. (Pet'r's Hr'g Req., p.1; Pet'r's Ltr., p. 1.)

Petitioner states that she is unemployed and her husband, who suffers from Leukemia and another serious blood disorder, is on permanent disability. As such, she asserts that any offset will cause severe financial stress on the family. (Pet'r's Hr'g Req., p. 1; Pet'r's Ltr., p. 1.) The Secretary, meanwhile, counters that financial hardship is not a defense in an administrative offset action. (Sec'y. Stat., ¶ 7.) The Court acknowledges Petitioner's financial circumstances. However, the law provides that "unfortunately, in administrative offset cases, evidence of financial hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past due and enforceable." *Edgar Joyner, Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005); *Anna Filiziana*, HUDBCA No. 95-A-NY-T11 (May 21, 1996); *Charles Lomax*, HUDBCA No. 87-2357-G679 (February 3, 1987). Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. *Raymond Kovalski*, HUDBCA No. 87-1681-G18 (December 8, 1986). Furthermore, no regulation or statute currently exists that permits financial hardship to be considered as a basis for determining whether a debt is past due and enforceable in cases involving debt collection by means of administrative offset. Thus, consistent with case law precedent and statutory limitations, I find that financial hardship cannot be considered as a defense in this case, as the debt owed by Petitioner is sought to be collected by means of administrative offset.

Petitioner next argues "[T]his metal roof can never be ours. ... It cannot be removed from the home. (Pet'r's Hr'g Req, p. 1.) She states that "[I] still fail to realize how we can be held responsible for a new metal roof that is attached to a home that will be sold by Chase Mortgage, and will magically be their roof." (Pet'r's Ltr.) Petitioner further contends that "[W]e have not made a payment on this home in over a year, and can't seem to get any help there as far as going ahead with foreclosure. I feel that this debt should definitely belong to Chase, since the home to which the roof is attached is, in all reality, owned by Chase Mortgage." (Petitioner's Documentary Evidence, p.1, filed December 2, 2011.)

Petitioner's legal obligation to pay the subject debt is not contingent upon her enjoyment of the property or its associated products. Rather, she became obligated to repay the loan when she signed the Note and received the funds. By Petitioner's own admission, she acknowledges that she signed the Note and received the funds. After benefitting from the receipt of the funds, Petitioner cannot now refuse to meet her legal obligation to repay the loan. Thus, I find that Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

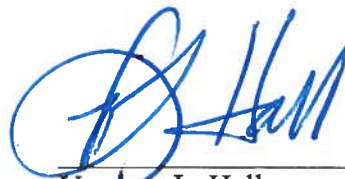
Petitioner next asks "Why can this not be attached to the home loan, or placed as a lien somehow, so that when the mortgage company sells/forecloses on the home, it will be a part of the home package?" (Pet'r's Hr'g Req., p.1.; Pet'r's Ltr., p. 1.) HUD regulations only authorize the Court to determine whether the instant debt is past due and legally enforceable. (See 24 C.F.R. § 17.150 et seq.) As a result, there is no legal basis upon which this Court can provide the relief requested by Petitioner. I find, therefore, that the debt is past due and legally enforceable based upon the evidence presented in the record, and as a result, Petitioner remains indebted to HUD in the amount claimed by the Secretary.

Finally, Petitioner states, "I plan to contact my local representatives and ask that this debt be forgiven." (Pet'r's Hr'g Req., p. 1.) While Petitioner may wish to negotiate repayment terms with the Department, this Court is not authorized to extend, forgive, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Counsel for the Secretary or Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152. Petitioner may also request a review of his financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

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 federal treasury offset is **VACATED**.

It is hereby **ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of federal treasury offset to the extent authorized by law.



Vanessa L. Hall
Administrative Judge

March 14, 2012