

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

John Jennings, Jr.,

Petitioner

HUDOA No. 11-H-NY-LL59

Claim No. 7-210042500A

Date: April 24, 2012

DECISION AND ORDER

On September 12, 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 concerning the existence, amount, or enforceability of the alleged debt. (Petitioner's Hearing Request ("Pet'r's Hr'g. Req."), filed September 26, 2011.) The Office of Hearings and Appeals has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.81(b). The administrative judges of this Court have been designated to conduct a hearing to determine whether the alleged debt is legally enforceable. 24 C.F.R. §§ 17.69 and 17.73. As a result of Petitioner's hearing request, this Office temporarily stayed referral of the debt to the U.S. Department of Treasury for offset on September 28, 2011. (Notice of Docketing, Order, and Stay of Referral, issued September 28, 2011.)

Background

On June 9, 2005, Petitioner executed and delivered a Partial Claims Promissory Note ("Note" or "Subordinate Note") to the HUD Secretary in the amount of \$4,169.33. (Secretary's Statement ("Sec'y. Stat."), ¶ 4, filed December 12, 2011; Ex. A, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), ¶ 4.) In exchange, HUD advanced funds to Petitioner's lender, National City Mortgage, to bring Petitioner's primary home mortgage current and avoid foreclosure. (Sec'y. Stat., ¶ 3; Dillon Decl., ¶ 4.)

The Subordinate Note cites specific events that make the debt become due and immediately payable. One of these events is the payment in full of the primary mortgage. (Sec'y. Stat., ¶ 5; Dillon Decl., ¶ 4; Ex. B, Note, ¶ 3(A)(i).) The Note also specifies that Petitioner must make payment at the:

Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410, or any such other place as [HUD] may designate in writing by notice to Borrower.

(Sec'y. Stat., Note, 3(B).)

On or about July 19, 2005, the FHA insurance on Petitioner's primary mortgage was terminated when National City Mortgage notified the Secretary that the mortgage had been paid in full. (Sec'y. Stat., ¶ 6; Dillon Decl., ¶ 4.) The Secretary alleges that Petitioner failed to make payment at the place and in the amount specified in the Note. (Sec'y. Stat., ¶ 8.)

HUD has attempted to collect the alleged debt from Petitioner, but has been unsuccessful. (Sec'y. Stat. ¶ 9; Dillon Decl., ¶ 5.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$4,169.33 as the unpaid principal balance as of November 30, 2011;
- (b) \$764.50 as the unpaid interest on the principal balance at 4% per annum through November 30, 2011;
- (c) \$434.86 as the unpaid penalties and administrative costs through November 30, 2011; and
- (d) interest on said principal balance from December 1, 2011, at 1% per annum until paid.

(Sec'y. Stat., ¶ 9; Dillon Decl., ¶ 5.)

A Notice of Intent to Collect by Treasury Offset, dated September 12, 2011, was sent to Petitioner. (Sec'y. Stat., ¶ 10; Dillon Decl., ¶ 7.)

Discussion

In an administrative offset proceeding, Petitioner bears the burden of proving that all or part of the alleged debt is not past due or not legally enforceable. 24 C.F.R. § 17.69(b). Here, Petitioner disputes the existence of the alleged debt because he claims the debt was repaid in connection with the July 15, 2005, sale of his home. (Pet'r's. Hr'g. Req., p. 2.)

Petitioner offers, as support, copies of correspondence from National City Mortgage notifying Petitioner that the primary mortgage on the home had been paid in full, and that HUD had been informed of the loan fulfillment. (Pet'r's. Hr'g. Req., pp. 3-5.) In addition, Petitioner presented a Settlement Statement and other documents from Companion Title Services, LLC., which reflected the payoff amount of the loan. (Petitioner's Documentary Evidence ("Pet'r's. Docs."), p. 2, filed November 22, 2011.)

The Secretary contends, however, that the payoff to National City Mortgage eliminated only the primary mortgage, and therefore did not alter Petitioner's obligations to repay HUD. (Sec'y. Stat., ¶ 11.) As support, the Secretary offers a copy of the Subordinate Note signed by Petitioner's and in which Petitioner agreed that payment of the debt referenced in the Subordinate Note will be paid when "Borrower has paid in full all amounts due under the primary Note and related mortgage, deed of trust or similar Security Instruments insured by the Secretary." (Sec'y. Stat., Attach. Note, ¶4(A)(i)).

For Petitioner to avoid his legal obligation under the Note, he must provide either: (1) a written statement from HUD releasing him from the debt; or, (2) evidence of valid or valuable

consideration accepted by HUD as satisfaction of the debt. See *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); *William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (October 4, 1999); *Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 (January 27, 1988); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986).

While Petitioner has shown that his primary loan to National City Mortgage has been paid in full, it was the full payment of that loan that rendered the debt referenced in the Subordinate Note to become due and immediately payable. An examination of the record shows that, to date, Petitioner has not provided evidence that the HUD debt was also satisfied. Since the alleged debt due under the Subordinate Note exists independent of the primary mortgage, the payoff to National City Mortgage is not by default a payoff of the debt due under the Subordinate Note. Even the documentary evidence submitted by Petitioner supports this conclusion. For example, a letter from Nationwide Title Clearing Company states that: "Our records indicate that this loan has been paid in full to **National City Mortgage Company.**" (Pet'r's Hr'g. Req., p. 3) (emphasis added). A letter from National City Mortgage itself also states that the company "received payment in full of your mortgage loan." (*Id.* at p. 4.)

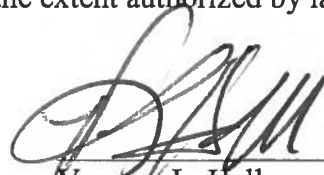
In addition, Line 504 of Petitioner's Settlement Statement lists a payoff amount of \$84,025.15 for "first mortgage to National City Mortgage." (Pet'r's Docs., p. 2.) Line 505 that lists payoff amounts for a second mortgage remains blank. (*Id.*) The evidence presented thus far only proves that the primary loan was satisfied but that the alleged debt remains past due. Without evidence from Petitioner to prove that he has been either released from the alleged debt, or has provided valuable consideration in satisfaction of the debt, Petitioner remains legally obligated to pay the debt that is the subject of this proceeding. Therefore, I find that while the primary loan was satisfied, the alleged debt that is the subject of this proceeding remains due in the amount claimed by the Secretary.

Next, Petitioner contends that HUD "must seek to collect the alleged debt from Petitioner's insurance company rather than from Petitioner himself." (Petitioner's Additional Documentary Evidence ("Pet'r's Add. Docs."), filed November 28, 2011.) Petitioner states "that he is not a proper party to this action, and that HUD must pursue his insurance company for relief." (Pet'r's Add. Docs. p. 1.) Petitioner does not explain, however, why the insurance company would be responsible for the repayment of Petitioner's debt, and further, which insurance company he is referencing to be held responsible. The Promissory Note identifies the parties as "borrower" and "lender," with "borrower" defined as "each person signing at the end of this Note." (Sec'y. Stat., Ex. B ¶ 1.) The only signature reflected at the end of the Note in this case belongs to the Petitioner. The terms and provisions of the Note therefore are binding on the Petitioner, and not on his insurance company. As a result, the Court finds that according to the terms and provisions of the Note, Petitioner remains legally obligated to pay debt that is the subject of this proceeding.

ORDER

Based on the foregoing, 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 to the extent authorized by law.



Vanessa L. Hall
Administrative Judge