



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

In the Matter of:

Albert S. O'Donnell,
Petitioner.

HUDOA No. 11-M-CH-LL03
Claim No. 7-700100610A

Albert S. O'Donnell
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Van Buren, AR 72956

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" or "the Secretary") 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 by Petitioner.

On December 6, 2010, Petitioner made a request for a hearing concerning the existence, amount or enforceability of the alleged debt to HUD. The Office of Appeals has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.170(b). 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. §§ 17.152 and 17.153. 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 December 7, 2010. (Notice of Docketing, Order, and Stay of Referral, issued December 7, 2010.)

Findings of Fact

On August 19, 1985, Petitioner executed and delivered to First Federal Savings and Loan Association of Bemidji an installment note ("Note"), in the amount of \$15,000.00 for a home improvement loan that was insured against nonpayment by HUD. (Secretary's Statement ("Sec'y Stat."), filed January 14, 2011, ¶ 2; Sec'y Stat., Ex. A, Note.) After Petitioner defaulted on the Note, the Note was assigned to HUD by First Federal Savings and Loan Association, under the regulations governing the Title I Insurance Program. (Sec'y Stat., Ex. A1, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center. ("Dillon Decl."), dated December 16, 2010.)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains in default. (Sec'y Stat. ¶ 5; Dillon Decl. ¶ 4.) Petitioner is indebted to HUD in the following amounts

- (a) \$6,012.63 as the unpaid principal balance as of November 30, 2010;
- (b) \$2,419.83 as the unpaid interest on the principal balance at 7.0% per annum through November 30, 2010; and
- (c) interest on said principal balance from December 1, 2010 at 7.0% per annum until paid.

(Sec'y Stat. ¶ 5; Dillon Decl. ¶ 4.) A Notice of Intent to Collect by Treasury Offset, dated November 8, 2010, was sent to Petitioner. (Sec'y Stat. ¶ 6; Dillon Decl. ¶ 5.)

Conclusion of Law

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 these 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*, HUDCA No. 02-C-CH-CC049 (Sept. 25, 2003).

In Petitioner's Hearing Request, Petitioner states "I am requesting a review of your determination that this account is a delinquent debt. I believe that this debt has been satisfied. The debt was repaid through payroll deductions and treasury offset, for more than 15 years." (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed December 6, 2010.) On December 7, 2010, this Office ordered the Secretary to file documentary evidence to prove that Petitioner is indebted to HUD in the amount alleged, and that the alleged debt is enforceable and past due. (Notice of Docketing, Order and Stay of Referral, "dated December 7, 2010. "Notice of Docketing or Order.") On January 14, 2011, the Secretary filed a Statement setting forth his argument that Petitioner is indebted to HUD, and supported his argument with a copy of the Note and a sworn declaration by Brian Dillon. (Sec'y Stat., Attachs.)

Having received the Secretary's Statement and documentary evidence, this Office also ordered Petitioner to file his documentary evidence to "prove that Petitioner does not owe the alleged debt in this case, or that the debt is unenforceable or not past due." (Notice of

Docketing.) In response to the Order, Petitioner filed a letter stating, "First off, I did make the loan, I am not disputing that at all. My wife left me and persuaded the county of Beltrami, MN to put her in a house and bill me for all expenses... Trying to maintain two homes. I could not do it. Within four months the lender foreclosed [sic]." (Petitioner's Letter ("Pet'r's Ltr."), filed January 18, 2011.) Petitioner did not file any documentary evidence to support his argument that he is not responsible for this debt. This Office has held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable." Troy Williams, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (citing, Bonnie Walker, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). Further, Petitioner's failure to file documentary evidence implicates 24 C.F.R. § 26.4(a), which states that "[t]he hearing officer may sanction a person, including any party or representative for failing to comply with an order...; failing to prosecute or defend an action; or engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing." 24 C.F.R. § 26.4(a) (2010). Pursuant to 24 C.F.R. § 26.4(c), which sets forth the specific sanctions that may be imposed, including "any appropriate order necessary to the disposition of the hearing including a determination against the noncomplying party..." (24 C.F.R. § 26.4(a)) this Office finds that: (1) Petitioner has not met his burden of proving his defense against the Secretary's allegations; and (2) the debt in this case is past due and enforceable in the amount alleged by the Secretary.

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. 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 refer this matter to the U.S. Department of the Treasury for administrative offset of any federal payment due Petitioner.



H. Alexander Manuel
Administrative Judge

February 16, 2011