



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

In the Matter of:

**NORMAN P. LECHE,**  
Petitioner

HUDOA No. 11-M-CH-LL07  
Claim No. 7-707629190A

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**DECISION AND ORDER**

On or about November 29, 2010, 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”) 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.

On December 20, 2010, Petitioner made a request for a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD in this case. The Office of Appeals has been designated to conduct a hearing to determine whether the debt allegedly owed to HUD is legally enforceable. 24 C.F.R. § 17.152(c). As a result of Petitioner’s hearing request, referral of the debt to the U.S. Department of the Treasury for administrative offset was temporarily stayed by this Office on December 22, 2010, until the issuance of a written decision by the Administrative Judge. *See* 24 C.F.R. § 17.156. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated December 22, 2010.)

**Background**

On or about October 19, 1990, Petitioner executed and delivered to GSF & T, Inc., d/b/a AAA Homes, a Manufactured Home Retail Installment Contract and Security Agreement ("Note") in the amount of \$67,124.15. (Secretary's Statement ("Sec'y Stat."), filed January 18, 2011, ¶ 2, Ex. A.) The Note was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (*Id.* at ¶ 3.) Petitioner failed to make payments as agreed in the Note, and the Note was subsequently assigned to HUD. (*Id.* at ¶ 4; Ex. B, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated January 13, 2011, ¶ 3.)

HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 4.) Petitioner is alleged to be indebted to the Secretary in the following amounts:

- (a) \$12,604.34 as the unpaid principal balance as of December 30, 2010;
- (b) \$2,048.15 as the unpaid interest on the principal balance at 3.0% per annum through December 30, 2010; and
- (c) interest on said principal balance from December 31, 2010 at 3.0% per annum until paid.

(Sec'y Stat., ¶ 7; Dillon Decl., ¶ 4.) A Notice of Intent to Collect by Treasury Offset, dated November 29, 2010, was sent to Petitioner by HUD. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 5.)

### Discussion

31 U.S.C. §§ 3716 and 3720A authorize federal agencies to collect debts owed to the United States Government by means of administrative offset. The burden of proof is on the alleged debtor to show that the debt claimed by the Secretary is unenforceable or not past due. 24 C.F.R. § 17.152(b). Failure to provide documentary evidence to meet this burden shall result in a dismissal of the debtor's request for review. *Id.*

Petitioner requested "a review of HUD's initial determination that the debt is past-due and legally enforceable." (Petitioner's Hearing Request ("Pet'r Hr'g Req."), filed December 20, 2010.) Pursuant to Petitioner's Hearing Request, on December 22, 2010, this Office ordered the Secretary to file his documentary evidence to prove that Petitioner is indebted to HUD in the amount alleged, and that the debt is enforceable and past due. (Notice of Docketing, at p. 2.) On January 18, 2011, the Secretary complied with the order set forth in the Notice of Docketing and filed the Secretary's Statement, supported by a copy of the Note and a sworn declaration made by Brian Dillon. (Sec'y Stat., Attachs.)

After receiving the Secretary's documentary evidence, on January 19, 2011, this Office ordered Petitioner to file "documentary evidence in accordance with 24 C.F.R. § 17.152(b) proving that all or part of the alleged debt in this case is not past due or not legally enforceable...." (Order, dated January 19, 2011.) In response, Petitioner filed a letter purporting to set forth his record of payment for the alleged debt in this case, and seeking to adjust the repayment schedule for Petitioner's alleged remaining debt. (Petitioner's Letter ("Pet'r Ltr."),

dated February 10, 2011.) Petitioner stated, “The attached documentation shows payments through August 2002 at which time the monthly payments were automatically withheld from Mr. Leche’s monthly disability checks. . . Mr. Leche is asking if the amount due could be discounted. He also wishes to set up a repayment schedule for any further amounts due.” (*Id.*)

On February 11, 2011, this Office issued Ruling and Order, accepting the Petitioner’s letter as a request for extension of time to allow him to discuss potential repayment or settlement terms with the HUD Albany Financial Operations Center. (Ruling and Order, dated February 11, 2011.) This Office granted the Petitioner’s request for extension of time, and ordered Petitioner to file, on or before March 2011, documentary evidence to prove that the alleged debt to HUD in this case is not owed or is unenforceable or not past due. (*Id.*) The Ruling and Order stated that “[f]ailure to comply with this Order shall result in a decision based on the documents in the record of this proceeding.” (emphasis in original) (*Id.*) Petitioner failed to comply with the Ruling and Order.

Despite having been given the extension of time, Petitioner has not filed any evidence to support his assertion that he does not owe the debt in this case, or that the debt is not past due or legally enforceable. 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)). As Petitioner has failed to file documentary evidence in compliance with the order of this Office, I find that Petitioner’s argument fails for want of proof. Further, this Office finds a sanction against Petitioner under 24 C.F.R. § 26.4 to be appropriate. 24 C.F.R. § 26.4(a) 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). Therefore 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 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.



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H. Alexander Manuel  
Administrative Judge

March 28, 2011