



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

In the Matter of:

Ronald W. Killam,

Petitioner

HUDOA No. 11-M-CH-LL14
Claim No. 7-806841370A

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DECISION AND ORDER

On or about December 10, 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 January 21, 2011, 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 January 25, 2011, 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 January 25, 2011.)

Background

On October 5, 1999, Petitioner executed and delivered to Pacific Mortgage Exchange an installment note ("Note") in the amount of \$25,000. (Secretary's Statement ("Sec'y Stat."), filed February 25, 2011, ¶ 2, Ex. A.) [The Secretary has not provided a complete copy of the Note.] The Note was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (*Id.*) The Note was later assigned to TMS Mortgage, Inc., d/b/a The Money Store, which in turn assigned the Note to HOMEQ Servicing Corporation, successor by merger to TMS Mortgage, Inc. (*Id.*) Petitioner failed to make payments as agreed in the Note, and the Note was subsequently assigned to HUD by Wells Fargo Bank Minnesota, N.A., as Trustee under the Pooling and Servicing Agreement, dated February 28, 2001, by HOMEQ Servicing Corporation. (*Id.* at ¶ 3; Ex. A2; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated February 11, 2011, ¶ 3.)

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

- (a) \$19,143.77 as the unpaid principal balance as of January 30, 2011;
- (b) \$3,505.69 as the unpaid interest on the principal balance at 4.0% per annum through January 30, 2011;
- (c) \$6,995.41 as the unpaid penalties and administrative costs on the principal balance through January 30, 2011; and
- (d) interest on said principal balance from February 1, 2011 at 4.0% per annum until paid.

(Sec'y Stat., ¶ 5; Dillon Decl., ¶ 4.) A Notice of Intent to Collect by Treasury Offset, dated December 10, 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 contends "[t]he debt in question was discharged in a Chapter 13 Bankruptcy." (Petitioner's Hearing Request, filed January 21, 2011.) Pursuant to Petitioner's Hearing Request, on January 25, 2011, this Office ordered the Secretary to file 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 February 25, 2011, the Secretary complied with the order set forth in the Notice of Docketing and filed the Secretary's Statement, supported by a sworn

declaration made by Brian Dillon, a copy of the Note, and copies of documents related to Petitioner's Chapter 13 bankruptcy filing. (Sec'y Stat., Exs.)

After receiving the Secretary's documentary evidence, this Office ordered Petitioner to file documentary evidence to prove that Petitioner is not indebted to HUD, that the alleged debt in this case is not past due, or that the debt is not legally enforceable against Petitioner." (Order, dated February 28, 2011.) In response, Petitioner filed a sworn affidavit in which he states: "Pursuant to the U.S. Bankruptcy Court's (10/15/2010) Discharge of Debtors order . . . , I am no longer indebted to HUD, even though HUD may have a junior lien in the amount of the Claim (\$29,644.87) against my homestead residence. . . . Accordingly, the alleged debt (\$29,644.87) in this case is not past due, nor is the Claim legally enforceable against me personally." (Petitioner's Affidavit ("Affidavit"), filed March 23, 2011.)

The Discharge of Debtor(s) order issued by the United States Bankruptcy Court of the Southern District of Texas in favor of Petitioner states that Petitioner "is granted a discharge under section 1328(a) of title 11, United States Code, (the Bankruptcy Code)." (Affidavit, Attach. ("Discharge"), dated October 15, 2010.) Section 1328(a) reads, in part, "as soon as practicable after completion by the debtor of all payments under the [Chapter 13 bankruptcy] plan, . . . the court shall grant the debtor a discharge of all debts provided for by the plan . . . except any debt provided for under section 1322(b)(5)." 11 U.S.C. § 1328(a). Section 1322(b)(5) provides for "secured claim[s] on which the last payment is due after the date on which the final payment under the plan is due." 11 U.S.C. § 1322(b)(5).

When Petitioner filed for Chapter 13 bankruptcy, HOMEQ Servicing Corporation filed a secured proof of claim for the Note in the amount of \$20,251.41 with arrearages of \$661.70. (Sec'y Stat., ¶ 7, Ex. A1, Dillon Decl., ¶ 6.) Petitioner's Chapter 13 Plan provided for payment of \$661.70 in arrearage and the Trustee's Final Report and Account shows that Petitioner disbursed that amount to HUD. (Sec'y Stat., ¶ 8, Ex. C; Dillon Decl., ¶ 7.) Petitioner completed payments under his Chapter 13 Plan on September 28, 2010 and the bankruptcy court ordered discharge of his debts on October 15, 2010. (Sec'y Stat., ¶ 8, Ex. C; Discharge.) However, final payment on the Note is due on October 15, 2014. (Sec'y Stat., Ex. A.) Therefore, under sections 1328(a) and 1322(b)(5) of the Bankruptcy Code, Petitioner's debt on the Note was not discharged at the completion of his Chapter 13 bankruptcy proceedings because the note is a secured claim on which the final payment is due after the date on which the final payment under the plan was due. Accordingly, this Office finds that 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

H. Alexander Manuel
Administrative Judge

March 31, 2011