



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

In the Matter of:

Fredrick Perry,
Petitioner

HUDOA No. 11-M-CH-LL17
Claim No. 7802775770A

Fredrick Perry
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Lancaster, TX 75146

Pro se

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DECISION AND ORDER

On or about January 17, 2011, 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 February 10, 2011, Petitioner requested a hearing concerning the existence, amount or enforceability of a debt allegedly owed 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 are designated to conduct a hearing to determine whether the debt allegedly owed to HUD 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 February 11, 2011. See 24 C.F.R. § 17.156.

Background

On or about June 28, 1996, Petitioner executed and delivered a FHA Title I Property Improvement Loan Retail Installment Contract and Contract for Labor and Materials Trust Deed (collectively referred to as the "Note") to Mastercraft Builders ("Mastercraft") in the amount of \$22,400.00. (Secretary's Statement ("Sec'y Stat."), filed March 23, 2011, ¶ 2, Exs. A, B; Ex. C, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated March 18, 2011, ¶ 3.) The Note was insured against nonpayment by the Secretary under Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec'y Stat., ¶ 3; Dillon Decl., ¶ 3.) Petitioner failed to make payments as agreed in the Note, and the Note was subsequently assigned to HUD. (Sec'y Stat., ¶ 4, Exs. B, D; Dillon Decl., ¶ 3.)

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (Sec'y Stat., ¶ 5; Dillon Decl. ¶ 4.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to HUD in the following amounts:

- (a) \$16,841.07 as the unpaid principal balance as of February 28, 2011;
- (b) \$2,694.72 as the unpaid interest on the principal balance at 6.0% per annum through February 28, 2011; and
- (c) interest on said principal balance from March 1, 2011 at 6% per annum until paid.

(Sec'y Stat., ¶ 7, Dillon Decl., ¶ 4.) A Notice of Intent to Collect by Treasury Offset dated January 17, 2011 was sent to Petitioner. (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 denies that the debt in this case is past due or legally enforceable based on his Chapter 13 bankruptcy. (Petitioner's Hearing Request ("Pet'r Hr'g Req."), filed February 10, 2011.) Petitioner states, "I . . . am sending the papers showing that I do not owe HUD. Please look into it, so that the records could reflect that." (*Id.*) As support, Petitioner filed a copy of a Voluntary Petition ("Petition") and an Order Discharging Debtor After Completion of Chapter 13 Plan ("Discharge Order"). (*Id.*, Attach.) The Petition shows Petitioner filed for Chapter 13 bankruptcy before the United States Bankruptcy Court for the Northern District of Texas, Dallas Division on June 11, 2003. (*Id.*, Attach.) The Discharge Order shows that Petitioner was discharged from certain debts on June 18, 2008. (*Id.*, Attach.)

The subject debt, however, was not discharged under Petitioner's Chapter 13 bankruptcy plan. First, HUD was not listed as a creditor in Petitioner's bankruptcy petition. (Pet'r Hr'g Req., Attach; Sec'y Stat., ¶ 8, Ex. F.) Second, pursuant to 11 U.S.C. § 1328(a)(1) and 11 USC § 1322 (b)(5), a debt is not discharged on a secured claim on which the last payment is due after the date of the final payment under a bankruptcy plan. (Dillon Decl. ¶ 6.) The subject debt was secured by Petitioner's home and the final payment on the Note was not due – in other words, the Note did not mature – until July 9, 2011, subsequent to the July 18, 2008 discharge. (Sec'y Stat., ¶ 8, Ex. E; Dillon Decl. ¶ 6.)

Petitioner's assertion also fails for lack of proof. Petitioner has submitted no evidence that he scheduled the debt to HUD on his bankruptcy petition or that the debt was ever discharged by the U.S. Bankruptcy Court. In the absence of such evidence, Petitioner remains liable for the 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)).

Petitioner has, therefore, not met his burden to prove that the debt in this case is not past due or legally enforceable. In the absence of documentary evidence to support Petitioner's position, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner as set forth in the Notice of Intent to Collect by Treasury Offset.

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

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

May 23, 2011