



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

In the Matter of:

Michael J. Davis,

Petitioner

HUDOA No. 11-M-CH-LL19
Claim No. 7-210067570A

Michael J. Davis
7126 Lyons Road
Garland, TX 75043

Pro se

Sara Mooney, Esq.
U.S. Department of Housing and
Urban Development
Office of Assistant General Counsel
For Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

For the Secretary

DECISION AND ORDER

On January 24, 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 17, 2011, Petitioner made a request for a hearing concerning the existence, amount, or enforceability of the 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. § 17.152(b). The administrative judges of the Office of Appeals have been designated to conduct a hearing to determine whether the debt allegedly owed to HUD is legally enforceable. 24 C.F.R. §§ 17.152, 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 28, 2011. (Notice of Docketing, Order and Stay of Referral ("Notice of Docketing"), Feb. 28, 2011.)

Background

On July 31, 2000, Petitioner executed a Subordinate Note and Subordinate Mortgage (the "Note") in the amount of \$3,900.10. (Secretary's Statement ("Sec'y Stat."), ¶ 2.) The Note stated that it would become payable upon Petitioner's payment in full of all amounts due under the primary note and related mortgage, deed of trust or similar security instrument insured by the Secretary. (Sec'y Stat., ¶ 3; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center, ("Dillon Decl."), ¶ 4.) On or about November 1, 2006, the mortgage was paid in full and the FHA Insurance was terminated. (Sec'y Stat., ¶ 3; Dillon Decl., ¶ 4.)

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

- (a) \$3,900.10 as the unpaid principal balance as of February 28, 2011;
- (b) \$13.00 as the unpaid interest on the principal balance at 1.0% per annum through February 28, 2011; and
- (c) interest on said principal balance from March 1, 2011 at 1.0% per annum until paid.

(Sec'y Stat., ¶ 6; Dillon Decl., ¶ 5.) A Notice of Intent to Collect by Treasury Offset dated January 24, 2011, was sent to Petitioner. (Sec'y Stat. ¶ 4; Dillon Decl., ¶ 6.)

Discussion

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*, HUDBCA No. 02-C-CH-CC049 (September 25, 2003).

On February 17, 2011, Petitioner's Determination Review Request for HUD Claim No. 7-210067570A ("Hearing Request") was filed with this Office. In the Hearing Request, Petitioner stated, "I am completely unaware of any amount due, and wish to dispute it." (Pet'r's Hr'g Req., filed Feb. 17, 2011.)

On February 28, 2011, this Office ordered the Secretary to file documentary evidence to prove that Petitioner is indebted to HUD in the amount alleged to be due and owing, and that the alleged debt is enforceable and past due. (Notice of Docketing, at p. 2.) On March 17, 2011, the Secretary complied with the order set forth in the Notice of Docketing and filed the Secretary's Statement, which was 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 May 17, 2011, this Office ordered Petitioner to file "documentary evidence to prove that all or part of the alleged debt in this case is unenforceable, not past due, or incorrectly calculated." (Order ("May Order"), dated May 17, 2011.) The May Order also required Petitioner to file his evidence "on or before June 3, 2011" and stated that "[f]ailure to comply with this Order may result in a dismissal of Petitioner's Request for Hearing or a decision based upon the documents in the record of this proceeding." (*Id.*) To date, Petitioner has not filed any documentary evidence to support Petitioner's position.

This Office has held that assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or unenforceable. *Bonnie Walker*, HUDBCA No. 95-G-NY-7300 (July 3, 1996). Therefore, this Office finds that Petitioner's claim fails for want of proof. 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.

Further, this Office finds that sanctions are warranted against Petitioner under 24 C.F.R. § 26.4. 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," this Office finds that: (1) Petitioner has not met his burden of proof to come forward with evidence to support his appeal; and (2) the debt in this case is past due and enforceable in the amount alleged by the Secretary. 24 C.F.R. § 26.4(c).

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.

June 23, 2011



H. Alexander Manuel
Administrative Judge