



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

In the Matter of:

Jessie Durden,
Petitioner.

HUDOA No. 11-M-CH-LL38
Claim No. 7-707629190A

Jessie Durden
3345 Anita Street
Houston, TX 77004

Pro se

Amy Jo Conroy, Esq.
U.S. Department of Housing and
Urban Development
Office of General Counsel
for the Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

For the Secretary

DECISION AND ORDER

Jessie Durden ("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.

Petitioner sent a letter dated May 25, 2011, to this Office that was typewritten on Congresswoman Sheila Jackson Lee's official letterhead. This letter was deemed to be 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. § 17.170(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 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 June 10, 2011. (Notice of Docketing, Order and Stay of Referral ("Notice"), June 10, 2011.)

Background

On or about August 24, 1989, Petitioner and Hollie B. Hobbs executed and delivered to Texas Mortgage Investors, Inc. a Note and a Contract for Improvements (with Transfer of Lien) evidencing a debt of \$8,990.00. (Sec'y Stat., ¶ 2; Sec'y Stat., Exhs. A and B, Note and Contract for Improvements). The Note was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec'y Stat., ¶ 3; Sec'y Stat., Exh. D, Declaration of Brian Dillon, Director, Asset Recover Division, Financial Operations Center of the United States Department of HUD ("Dillon Decl."), ¶¶ 2-3.)

Petitioner failed to make payments as agreed in the Note, and as a result, the Note was subsequently assigned to HUD. (Sec'y Stat., ¶ 4; Note.) HUD has attempted to collect the amount due under the Note and alleges Petitioner remains delinquent. (Sec'y Stat., ¶ 5.) The Secretary alleges Petitioner is justly indebted in the following amounts:

- (a) \$4,657.01 as the unpaid principal balance as of June 3, 2011;
- (b) \$0.00 as the unpaid interest on the principal balance at 5.0% per annum through June 3, 2011; and
- (c) interest on said principal balance from June 4, 2011, at 5.0% per annum until paid.

(Dillon Decl., ¶ 4.)

HUD sent A Notice of Intent to Collect by Treasury Offset, dated February 8, 2010, to Petitioner. (Dillon Decl., ¶ 5.) On Marcy 31, 2011, HUD received an inquiry from Congresswoman Sheila Jackson-Lee on behalf of Petitioner. (*Id.* at ¶ 6.) By letter dated April 11, 2011, HUD responded to Congresswoman Jackson-Lee's inquiry and detailed the reasoning behind HUD's initial determination that the debt in this case is past due and legally enforceable. (*Id.*)

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).

In her Hearing Request, Petitioner stated that she "feels that this is not her past due debt and is not legally enforceable." (Pet'r's Hr'g Req.) Specifically, she explains her mother "took out a loan to place a roof on the house. Ms. Durden is claiming that the signature on the paperwork is not hers neither the social security number [sic]." (*Id.*)

On June 29, 2011, this Office ordered Petitioner to file documentary evidence to prove that she does not owe the debt in this case, or that the debt is unenforceable. (Order, dated Jun. 29, 2011.) The Order stated that such evidence:

shall include evidence in support of all her allegations, including (1) an opinion by a handwriting expert as to the authenticity of the signature at issue, or (2) proof that Petitioner was located elsewhere on the date that the Note was executed, such that it would have been an impossibility for Petitioner to have signed the Note as alleged.

(*Id.*)

In response to the Order, Petitioner submitted two letters requesting an extension of time to file such evidence. (Pet'r's Letter, dated Jul. 26, 2011; Pet'r's Letter, dated Jul. 27, 2011.) In both letters, Petitioner explained that she needed additional time to find a hand-writing analyst for less than \$750.00 per hour since she is "on fixed income" and that rate was too expensive. (Pet'r's Letter, dated Jul. 27, 2011.)

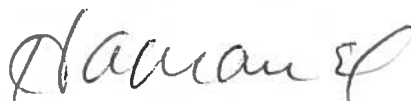
On September 1, 2011, this Office granted Petitioner's request for an extension of time and ordered Petitioner to file her documentary evidence on or before September 30, 2011. (Order, dated Sept. 1, 2011.) The Order also stated that, "[f]ailure to comply with this Order may result in a decision based on the documents in the record of this proceeding." (*Id.*)

As of the date of this Decision and Order, Petitioner has yet to file any evidence in support of her claim that she did not sign the Note and therefore does not owe this debt. This Office has consistently held that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable." *In re Troy Williams*, HUDOA No. 09-M-CH-AWG52, (Jun. 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (Jul. 3, 1996)). Considering the absence of evidence to support her claim, this Office, therefore, finds that Petitioner's argument must fail for want of proof.

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

January 3, 2012