



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

In the Matter of:

**Keisha Perry Mallard,**

Petitioner

HUDOA No. 11-M-NY-LL09  
Claim No. 7-806844260A

Keisha Perry Mallard  
3903 31<sup>st</sup> Street  
Tuscaloosa, AL 35401

*Pro se*

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For the Secretary

**RULING AND ORDER UPON RECONSIDERATION**

On July 1, 2011, Petitioner filed a letter with this Office. (Pet'r's Letter, filed July 1, 2011.) This letter is deemed to be a Motion for Reconsideration ("Petitioner's Motion") of the Decision and Order issued in *In re Keisha Perry Mallard*, HUDOA No. 11-M-NY-LL09 (June 21, 2011) ("Decision"). In the Decision, the Court found that the debt that is the subject of this case was legally enforceable against Petitioner in the amount claimed by the Secretary. (Decision at 2.) Petitioner's Motion objects to the Decision based on (1) the seller's alleged fraudulent activity in approving her for a loan, (2) Petitioner's age at the time the loan was executed, and (3) financial hardship. (Pet'r's Letter, filed July 1, 2011.)

Reconsideration of a prior decision is within the discretion of the administrative judge and will not be granted "in the absence of compelling reasons, e.g., newly discovered material evidence or clear error of fact or law." *See Paul Dolman*, HUDBCA No. 99-A-NY-Y41

(November 4, 1999); *Anthony Mesker*, HUDBCA No. 94-C-CH-S379 (May 10, 1995); *William G. Grammer*, HUDBCA No. 88-3092-H607 (March 7, 1988). Further, "it is not the purpose of reconsiderations to afford a party the opportunity to reassert contentions that have been fully considered and determined." See *Seyedahma Mirhosseini*, HUDBCA No. 95-A-SE-2615 (January 13, 1995); *Charles Waltman*, HUDBCA No. 97-A-NY-W196 (Sept. 21, 1999).

First, Petitioner states that the mobile home seller, who also acted as lender in this case, engaged in fraudulent activity. Specifically, Petitioner states that:

"I rejected the buy, but the manufactured home lender gave me a check and . . . . asked me to write a check to them so it would balance out, also for me to add addition [sic] 100.00 dollar [sic] so it wouldn't should [sic] that I was just depositing just what they gave me which was 4900 for the old home."

(Pet'r's Letter, filed July 1, 2011.) While Petitioner's allegations are somewhat unclear, they nevertheless give the impression that no loan occurred, but rather that the exchange of checks between Petitioner and the mobile home seller "balane[d] out" and resulted in Petitioner receiving a new mobile home without incurring debt from the transaction. Further, Petitioner states that "the manufactured home lender . . . . gave me a script to repeat in a phone call to get me approved." (*Id.*) To support her allegations of fraud, Petitioner submitted a copy of a check for \$4,900 to Quality Manufactured Housing. (*Id.*) She also submitted copies of checks in the amount of \$100.00 and \$5,104.14 to be deposited into her account. (*Id.*)

In the Secretary's response, the Secretary states that Petitioner's evidence fails to prove her allegations of fraud, and merely

supports the fact that the mobile home seller purchased the old mobile home, and Petitioner used the funds received from the seller as a down payment on the new mobile home. The check in the amount of \$4,900 issued to Quality Manufactured Housing on August 19, 2004, and the deposit slip showing that Petitioner deposited \$5,104.14 into her checking account on August 19, 2004 supports this conclusion.

(Secretary's Memorandum In Opposition to Petitioner's Motion for Reconsideration ("Sec'y Mem.") ¶ 13, filed July 27, 2011.) Further, the Secretary states that Petitioner's allegations regarding the script she was allegedly given to read as part of the loan qualification process "is not unusual or suspect, since it is a customary lending practice to be qualified for a loan by phone. The recitations made by Petitioner to the lender may simply have been required by the lender as part of the loan qualification process." (Sec'y Mem. ¶ 12.)

To establish a cause of action for fraud in Mississippi, the following elements must be proven: (1) a representation, (2) its falsity, (3) its materiality, (4) the speaker's knowledge of its falsity or ignorance of its truth, (5) the speaker's intent that the representation should be acted upon by the hearer and in the manner reasonably contemplated, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on the representation's truth, (8) the hearer's right to rely thereon, and (9) the hearer's consequent and proximate injury. *Allen v. Mac Tools, Inc.*, 671 So.

2d 636 (Miss. 1996). Similarly, Mississippi requires that “allegations of fraud shall be stated with particularity.” *Estate of Hudson v. Hudson*, 962 So. 2d 90, 93 (Miss. Ct. App. 2007) (citing M.R.C.P. 9(b)) (internal quotation marks omitted). “A complaint will be dismissed when a party fails to sufficiently plead allegations of fraud.” *Id.* (citing *State Indus. v. Hodges*, 919 So. 2d 943, 946 (Miss. 2006)).

Here, Petitioner has failed to submit proof to support any of the elements set forth above. For instance, Petitioner offers no proof of the contents of the alleged script or whether the representations in the script were false. In fact, Petitioner’s allegations are countermanded by her own statements and documentary evidence, particularly in regards to the alleged fraudulent exchange of checks between the mobile home seller and Petitioner. In her January 3, 2011 letter, Petitioner stated, “They . . . gave me a check and asked me to give them a check buying my mom’s dilapidated trailer to justify my purchase of a new trailer.” (Pet’r’s Letter, filed Jan. 3, 2011.) Petitioner’s copy of a deposit in the amount of \$5,104.14 corroborates her statement that the seller purchased her mother’s trailer. Further, Petitioner’s copy of a check for \$4,900 to Quality Manufactured Housing includes the words “Down payment” on the memo line. (Pet’r’s Letter, filed July 1, 2011.) It therefore appears that Petitioner used the proceeds from the sale of the old trailer toward a down payment on the new trailer. This would tend to contradict Petitioner’s suggestion that the exchange of checks “balance[d] out” and no debt resulted from the transaction. (*Id.*) Accordingly, this Court finds that Petitioner has failed to sufficiently allege any fraudulent activity on behalf of the seller.

Second, Petitioner states that she “does not deny the loan, but . . . was 19 at the time.” (Pet’r’s Letter, filed July 1, 2011.) In contrast, the Secretary states that based on Mississippi law, Petitioner was of the age of majority when she executed the Note and therefore is bound by its terms. (Sec’y Stat. ¶ 9.)

Petitioner’s claim that her young age excuses any liability on the Note is without merit. Under Mississippi law, all persons eighteen years of age or older have capacity to enter into contracts affecting personal property. MISS. CODE ANN. § 93-19-13 (1972); *see also Peoples Bank v. Wyatt*, 441 So. 2d 117 (Miss 1983); *Garrett v. Gay*, 394 So. 2d 321 (Miss. 1981). Therefore, since Petitioner had reached the age of majority, Petitioner was obligated to fulfill the terms of any contracts she voluntarily entered into, including the Note that is the subject of this proceeding. While Petitioner states that she “rejected the buy,” her January 3, 2011 letter states that she only “rejected the idea to buy on [her] income” but she later consented to the transaction after the mobile home seller offered to purchase her mother’s trailer. (Pet’r’s Letter, filed Jan. 3, 2011.)

Third, Petitioner asserts a financial hardship argument, stating that she is struggling to satisfy her housing obligations and unable to maintain a car or provide heat in her home. (Pet’r’s Letter, filed Jan. 3, 2011.) This Office acknowledges Petitioner’s financial circumstances, but the law states that “in administrative offset cases evidence of financial hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past-due and enforceable.” *Edgar Joyner, Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005); *Anna Filiziana*, HUDBCA No. 95-A-NY-T11 (May 21, 1996); *Charles Lomax*, HUDBCA No. 87-2357-G679 (Feb. 3, 1987). Financial adversity does not invalidate a debt or release a debtor

from a legal obligation to repay it. *Raymond Kovalski*, HUDBCA No. 87-1681-G18 (Dec. 8, 1986). Therefore, I find that financial hardship cannot be considered as a defense in this case as the debt owed by Petitioner is sought to be collected by means of administrative offset.

Finally, Petitioner requests that the debt "be written off or lower, so I would be able to make payment of a 20.00 a month." (Pet'r's Letter, filed July 1, 2011.) However, this Office is not authorized to extend, recommend, or accept any payment or settlement offer on behalf of HUD. Petitioner may wish to discuss this matter with Counsel for the Secretary or Lester J. West, Director, HUD Albany Financial Operations Center, Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206.

I find each of Petitioner's arguments and allegations to be unavailing. For the foregoing reasons, Petitioner's Motion for Reconsideration is DENIED. It is hereby

**ORDERED** that the administrative offset order authorized by the Decision and Order, *In re Keisha Perry Mallard*, HUDOA No. 11-M-NY-LL09, dated June 21, 2011, shall NOT be modified and shall remain in full force and effect.



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H. Alexander Manuel  
Administrative Judge

September 8, 2011