



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

In the Matter of:

Rhonda Harris,
Petitioner

HUDOA No. 11-M-NY-LL10
Claim No. 7-806831700B

Rhonda Harris
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Pro se

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For the Secretary

DECISION AND ORDER

On December 29, 2010, Petitioner filed a letter deemed to be a Request for a Hearing (Pet'r's Hr'g Req., ("Pet'r's Request") dated December 29, 2010.) concerning the existence, amount or enforceability of the debt allegedly owed to the Secretary of the U.S. Department of Housing and Urban Development ("HUD"). In Petitioner's Request, she stated:

"I believe that in good faith your company should eliminate all said fees and interest that has occurred over the past 5 years [I] am trying ot maintain a stable home environment for myself and my two children in this unstable economy."

On January 11, 2011, this Office issued a Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing") to Petitioner in which Petitioner was informed that,

“Documents relating to this alleged debt are not in the possession of this Office. Petitioner may request copies of these documents by writing to: Kim McManus, U.S. Department of Housing and Urban Development, Financial Operations Center, 52 Corporate Circle, Albany, NY, 12203.”

(Notice of Docketing, p. 2.) The Notice of Docketing also ordered Petitioner to file documentary evidence to prove that she is not indebted to HUD in the amount alleged, or that the alleged debt is not past due or not legally enforceable. (*Id.*) Pursuant to the Notice of Docketing, Petitioner was to file her evidence, “on or before February 23, 2011, or within 65 days of the Date of Notice found on the Notice of Intent to Collect by Treasury Offset, whichever is LATER.” (emphasis in original) (*Id.*) 24 C.F.R. § 17.152(b) provides that failure by the Petitioner to submit evidence within 65 calendar days from the date of the Department’s Notice of Intent, will result in a dismissal of Petitioner’s request for review by the HUD Office of Appeals. Petitioner did not file her documentary evidence and, as such, has failed to comply with 24 C.F.R. § 17.152(b), and the Order set forth by the Notice of Docketing.

Unfortunately, evidence of financial hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past-due and enforceable in administrative offset cases such as this. *Thelma Smith*, HUDBCA No. 00-A-NY-AA8 (June 19, 2000) (*citing Della Coleman*, HUDBCA No. 99-C-SE-Y73 (Feb. 23, 2000)). 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).

On March 15, 2011, this Office again ordered Petitioner to file, “on or before March 31, 2011, ... documentary evidence in accordance with 24 C.F.R. §17.152(b) proving that all or part of the alleged debt in this case is not past due or not legally enforceable against Petitioner.” (emphasis in original) (Order, issued June 30, 2010.) The Order also stated that, “[f]ailure to comply with this Order shall result in a decision based on the documents in the record of this proceeding.” (emphasis in original) (*Id.*) To date, Petitioner has not filed any documentary evidence to support her position. 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.” *In re Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (quoting, *In re Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). Accordingly, 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.

Furthermore, Rule 26.3 of Title 24 of the Code of Federal Regulations provides that, “If a party refuses or fails to comply with an Order of the hearing officer, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including *a determination against a noncomplying party.*” (emphasis added). As Petitioner has failed to comply with either of the Orders issued by this Office, I find that Petitioner’s non-compliance provides a basis for rendering a decision against Petitioner pursuant to Rule 26.3 of Title 24 of the Code of Federal Regulations. Upon consideration of Petitioner’s failure to comply with 24 C.F.R. § 17.152(b)

and Rule 26.3 of Title 24 of the Code of Federal Regulations, Petitioner's appeal is **DISMISSED** *sua sponte*. It is hereby

ORDERED that this matter be **DISMISSED** without prejudice and it is

FURTHER 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

June 9, 2011