



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

In the Matter of:

Joan Hattan

Petitioner

HUDOA No. 11-M-NY-LL23
Claim No. 780302722

Joan Hattan
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Pro se

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For the Secretary

DECISION AND ORDER

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.

Petitioner has requested 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). As a result of Petitioner's hearing request, referral of the debt to the U.S. Department of the Treasury for administrative offset was temporarily stayed by this Office on March 23, 2011 until the issuance of a written decision by the administrative judge. (Notice of Docketing, Order, and Stay of Referral, dated March 23, 2011.)

Background

On October 22, 1996, Petitioner executed and delivered a Note to Unicor Funding, Inc. in the amount of \$15,000.00, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703 (Secretary's Statement ("Sec'y Stat."), filed April 6, 2011, ¶ 2, Ex. A.) Petitioner failed to make payment on the Note, and the Note was subsequently assigned to HUD. (Sec'y Stat., ¶ 4.)

HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent. (*Id.* at ¶ 5; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated April 4, 2011, ¶ 4.) Petitioner is alleged to be indebted to the Secretary in the following amounts:

- (a) \$13, 563.17 as the unpaid principal balance as of March 31, 2011;
- (b) \$5, 780.65 as the unpaid interest on the principal balance at 6% per annum through March 31, 2011; and
- (c) interest on said principal balance from April 1, 2011 at 6% per annum until paid.

(Sec'y Stat., ¶ 5; Dillon Decl., ¶ 4.) HUD sent to Petitioner a Notice of Intent to Collect by Treasury Offset, dated July 16, 2011. (Sec'y Stat., ¶ 6; 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.*

First, Petitioner does not dispute that the debt owed to HUD is legally enforceable and properly calculated. (Pet'r's Aff., filed April 25, 2011, ¶ 1.) Petitioner states that "[i]t is admitted that the debt is legally enforceable and properly calculated." (*Id.*) Petitioner further states that financial hardships make payment of the note an "extreme and excessive burden." (*Id.* ¶ 9.) Although Petitioner may have suffered extreme financial hardship as described in her Affidavit, this Office must determine whether, as a matter of law, this debt is legally enforceable against Petitioner. "Unfortunately, evidence of hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is legally enforceable." *E.g., Edgar Joyner, Sr.*, HUDBCA No. 04-A-CH-EE052, at 12-13 (June 15, 2005) (*citing* Anna Filiziana, HUDBCA No. 95-A-NY-T11 (May 21, 1996)).

Second, Petitioner has not provided documentary evidence to prove that all or part of the alleged debt in this case is unenforceable against Petitioner or not past due. This Office has twice ordered Petitioner to file documentary evidence: first, on April 8, 2011, and again on May 11, 2011. Petitioner has nevertheless failed to provide documentary evidence to prove that the debt claimed by the Secretary is unenforceable or not past due. 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.” *Bonnie Walker*, HUDBCA No. 95-G-NY-7300 (July 3, 1996).

Accordingly, I find that Petitioner has not met her burden of proof, and that the debt in this case is past due and enforceable in the amount alleged by the Secretary.

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

June 29, 2011