



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

In the Matter of:

Andre D. Sherrill

Petitioner

HUDOA No. 11-M-NY-LL28
Claim No. 7-210068890A

Andre D. Sherrill
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Pro Se

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For the Secretary

DECISION AND ORDER

Andre D. Sherrill ("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.

On April 14, 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. § 17.170(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, 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 April 19, 2011 (Notice of Docketing, Order and Stay of Referral, dated April 19, 2011.)

Background

Petitioner denies liability for the debt in this case on the ground that the alleged debt to HUD was discharged by the U.S. Bankruptcy Court on February 8, 2006. On October 3, 2000, Petitioner filed a Chapter 13 Petition in Bankruptcy in the U.S. Bankruptcy Court for the Eastern District of Virginia. (Secretary's Statement ("Sec'y Stat."), ¶ 10, Ex. C.) This bankruptcy proceeding was dismissed (not discharged) on March 2, 2005. (Sec'y Stat., ¶ 11, Ex. A.) Petitioner subsequently filed a second Chapter 13 bankruptcy proceeding on March 3, 2005 in the U.S. Bankruptcy Court for the Eastern District of Virginia. (Sec'y Stat., ¶ 14, Ex. E.) On December 22, 2005, the Chapter 13 Trustee filed a motion to dismiss Petitioner's second bankruptcy proceeding for failure to make payments on his approved Bankruptcy Plan. (Sec'y Stat., ¶ 17.) Petitioner's second bankruptcy proceeding was subsequently dismissed (not discharged) on February 8, 2006. (Sec'y Stat., Ex. B.)

Subsequent to the dismissal of the first bankruptcy proceeding, Petitioner executed the Subordinate Note that is the subject of this case on October 24, 2005 in the amount of \$4,702.84. (Sec'y Stat., ¶ 2.) The Subordinate Note states that payment in full of Petitioner's primary mortgage note makes the Subordinate Note due and payable. (Sec'y Stat., ¶ 3.) The primary note was paid in full on or about March 17, 2006, thus triggering Petitioner's obligation to repay the Subordinate Note in full (Sec'y Stat., ¶ 4.)

HUD has attempted to collect on the Subordinate Note from Petitioner, but has been unsuccessful. (Sec'y Stat., ¶ 7.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$4,702.84 as the unpaid principal balance as of April 30, 2011;
- (b) \$15.68 as the unpaid interest on the principal balance at 1% per annum through April 30, 2011; and
- (c) interest on said principal balance from May 1, 2011 at 5% per annum until paid.

(Sec'y Stat., ¶ 7.) A Notice of Intent to Collect by Treasury Offset dated March 28, 2011 was sent to Petitioner. (Sec'y Stat., ¶ 8.)

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).

In Petitioner's Determination Review Request for HUD Claim N. 7-201168890A, Petitioner states that the alleged debt is not enforceable because HUD did not submit a claim to be paid after receiving notice of the bankruptcy proceedings. (Pet'r's Hr'g Req., filed April 14, 2011.) The Secretary argues that HUD received notice in both bankruptcy proceedings, but only as the insurer of Petitioner's primary mortgage. (Sec'y Stat., ¶ 12, 15.) The Secretary further argues that HUD was not required to submit a claim during either bankruptcy proceeding

because the Subordinate Note did not become due or payable until March 17, 2006, one month after Petitioner's second bankruptcy proceeding was dismissed. (Sec'y Stat., ¶ 18.) In the alternative, the Secretary argues that Petitioner failed to submit proof to support Petitioner's claim that HUD failed to submit a claim during the pendency of the bankruptcy proceeding. (Sec'y Stat., ¶ 19.)

Petitioner offers no evidence to support his assertion that he does not owe the debt in this case, or that the debt is not past due or legally enforceable. Nowhere does Petitioner address the Secretary's arguments set forth in paragraphs 18-19 of the Secretary's Statement that HUD was not required to submit a claim or that Petitioner has not provided proof that HUD failed to submit a claim during the bankruptcy proceeding. Further, Petitioner's letter, dated May 16, 2011, does not contest the alleged debt but rather states that Petitioner is "unable to pay the full amount at this time." (Petitioner's Letter ("Pet'r Ltr."), dated May 16, 2011.) Moreover, the second Chapter 13 bankruptcy proceeding was dismissed (not discharged) on February 8, 2006. Therefore, Petitioner's debt to HUD, as evidenced by the Subordinate Note, was not discharged and remains due and payable.

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 21, 2011