



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

In the Matter of:

**Sandy Kram,**

Petitioner

HUDOA No. 11-M-NY-LL35  
Claim No. 7-210068710A

Sandy Kram  
708 Villa Point Parkway  
McDonough, GA 30253

*Pro se*

Julia Murray, Esq.  
U.S. Department of Housing and  
Urban Development  
Office of Assistant General Counsel  
For New York/New Jersey Field Offices  
26 Federal Plaza, Room 3237  
New York, NY 10278

For the Secretary

**DECISION AND ORDER**

On or about March 28, 2011, 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 May 27, 2011, Petitioner filed a request for a hearing, dated May 13, 2011, concerning the existence, amount or enforceability of the debt. The Office of Appeals has been designated to conduct a hearing to determine whether the debt allegedly owed to HUD is legally enforceable. 24 C.F.R. § 17.152(c). 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 June 7, 2011, until the issuance of a written decision by the Administrative Judge. (Notice of Docketing, Order and Stay of Referral, dated June 7, 2011.)

## Background

On July 10, 2008, Petitioner's HUD-insured mortgage was in default, and Petitioner was threatened with foreclosure. (Secretary's Statement ("Sec'y Stat.") ¶ 2, filed June 15, 2011.) As a means of providing foreclosure relief, HUD advanced funds to the FHA insured lender to bring Petitioner's mortgage current. (Sec'y Stat. ¶ 4; Declaration of Gary Sautter, Acting Director, Asset Recovery Division, Financial Operations Center of HUD ("Sautter Decl.") ¶ 4, dated June 14, 2011.) The Note cited specific events that would make the debt become due and payable. One of those events was if Petitioner paid all amounts due under the primary note and related mortgage insured by the Secretary. (Sec'y Stat. ¶ 5; Sautter Decl. ¶ 4.) On or about October 5, 2010, the FHA insurance on the primary mortgage was terminated, as the lender indicated that the mortgage had been paid in full. (Sec'y Stat. ¶ 6; Sautter Decl. ¶ 4.)

The Secretary has attempted to collect the debt from Petitioner, but Petitioner remains delinquent. (Sec'y Stat. ¶ 9; Sautter Decl. ¶ 5.) The Secretary alleges that Petitioner is indebted to HUD on the claim in the following amounts:

- (a) \$5,662.44 as the unpaid principal balance as of May 31, 2011;
- (b) \$23.60 as the unpaid interest on the principal balance at 1% per annum through May 31, 2011; and
- (c) interest on said principal balance from June 1, 2011 at 1% per annum until paid.

(Sec'y Stat. ¶ 9; Sautter Decl. ¶ 5.) A Notice of Intent to Collect by Treasury Offset, dated March 28, 2011, was sent to Petitioner. (Sec'y Stat. ¶ 10; Sautter Decl. ¶ 6.)

## Discussion

Petitioner objects to the enforceability of the debt on two grounds: (1) that the administrative offset would result in a financial hardship to Petitioner; and (2) that Petitioner already paid off all debts associated with the mortgage. (Pet'r's Hr'g Req., filed May 27, 2011; Pet'r's Letter, dated Sept. 2, 2011.)

In Petitioner's hearing request, Petitioner stated that, "I simply do not have funds to pay debt in addition to my living expenses." (Pet'r's Hr'g Req.) In response, the Secretary states that in an administrative offset case, "the only inquiry for the Court is whether the debt is past due and legally enforceable." (Sec'y Stat. ¶ 12.)

This Office acknowledges Petitioner's financial circumstances, but the law provides that, "unfortunately, 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.

In addition to her financial hardship claim, Petitioner claims that she already paid all debt in connection with her mortgage. Petitioner states:

At the time of closing, The Closing Attorney and I both spoke with Wells Fargo Mortgage Corporation at length. We were given the pay off amount in full to satisfy any and all debt on This Property. Wells Fargo and I discussed an arrangement for the outstanding payments on the first mortgage. HUD and I did not enter into a written agreement. I have reviewed all paperwork in connection with The Mortgage and there have been no agreements signed by the Department of HUD and myself. It was clearly explained to me and The Closing Attorney by Wells Fargo Mortgage that all monies due in connection with this property was [sic] collected on September 30, 2010 leaving The Property free and clear of existing liens.

(Pet'r's Letter.)

Petitioner suggests that she did not sign the Subordinate Note, stating that "there have been no agreements signed by The Department of HUD and myself." (Pet'r's Letter.) However, the Secretary produced a copy of the Subordinate Note, which clearly contains Petitioner's signature. (Sec'y Stat., Ex. B.) This evidence belies Petitioner's claim that no agreement exists between her and HUD.

Petitioner also states that she "discussed an arrangement for the outstanding payments on the first mortgage" and that "all monies due in connection with this property" have been paid. (Pet'r's Letter.) Petitioner is correct that she satisfied all outstanding payments on her primary mortgage. The Secretary is in agreement with Petitioner on this point. (Sec'y Stat. ¶ 6; Sautter Decl. ¶ 4.) However, Petitioner has not satisfied all outstanding payments on the Subordinate Note, which is the subject of this administrative offset proceeding. The Subordinate Note states:

### 3. MANNER OF PAYMENT

#### (A) Time

On 4/1/2028, or, if earlier, when the first of the following events occurs:

- (i) Borrower has paid in full *all amounts due under the primary Note* and related mortgage, deed of trust of similar Security Instruments insured by the Secretary[.]

(Sec'y Stat., Ex. B) (emphasis added). Based on this language, the Subordinate Note becomes due and payable when the primary mortgage is paid in full. Therefore, when Petitioner paid her primary mortgage in full on October 5, 2010, Petitioner became obligated to pay the Subordinate Note. (Sec'y Stat. ¶ 6; Sautter Decl. ¶ 4.)

While Petitioner received a payoff amount from Wells Fargo which she believed had satisfied all debt on her property, the payoff amount only reflected the amount due to Wells Fargo since Wells Fargo was the lender on the primary mortgage. HUD was the lender on the Subordinate Note. Similarly, any assurances Petitioner received from Wells Fargo that "all

monies due in connection with this property” were paid could only refer to Petitioner’s satisfaction of the primary mortgage. (Pet’r’s Letter.)

For Petitioner to prevail in this instance, HUD would had to have given Petitioner a written release, or other documentary evidence, indicating an intent to release, supported by legally sufficient consideration. *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (Oct. 4, 1999); *James Ragsdale*, HUDBCA No. 88-3065-H580 (Aug. 3, 1988); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (Dec. 22, 1986); *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (Feb. 26, 1986). In this case, Petitioner has failed to demonstrate that she was released from her loan obligation or that any consideration has been conveyed to HUD. Therefore, absent evidence of a release in writing, I find that Petitioner is bound as a matter of fact and law by the terms of the Subordinate Note and the Secretary's right to proceed against Petitioner to collect this outstanding obligation is unimpaired. *Randy Tyer*, HUDBCA No. 89-4523-L12 (March 15, 1990); *In re Martha Townsend*, HUDBCA No. 87-1695-G32 (Dec. 30, 1986).

**ORDER**

Upon consideration, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. It is hereby

**ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative offset of any federal payments due to Petitioner.

The Order imposing the stay of referral of this matter to the Internal Revenue Service or to the U.S. Department of the Treasury for administrative offset is **VACATED**.



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H. Alexander Manuel  
Administrative Judge

September 29, 2011