



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

In the Matter of:

**Sabrina Smith,**  
Petitioner.

HUDOA No. 11-M-NY-LL41  
Claim No. 7-803132320A

Sabrina Smith  
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*Pro se*

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For the Secretary

**DECISION AND ORDER**

Sabrina Smith ("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 July 11, 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 and 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 July 14, 2011. (Notice of Docketing, Order and Stay of Referral ("Notice"), Jul. 14, 2011.)

## Background

On May 27, 1998, Petitioner executed and delivered a Fixed Rate Note ("Note") to Summit Mortgage Corp. in the amount of \$25,000.00 which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Sec'y Stat., ¶ 2; Exh. A, Note.) Contemporaneously, Summit Mortgage Corp. assigned the Note to the Money Store. (Sec'y Stat., ¶ 3; Note, 2.) Petitioner failed to make payment on the Note as agreed. (Sec'y Stat., ¶ 4.) Consequently, and in accordance with 24 C.F.R. § 201.54, on January 19, 2001, The Money Store assigned the Note to the United States of America. (*Id.*; Exh. B., Assignment to HUD.)

HUD has attempted to collect this alleged debt from Petitioner, but has been unsuccessful. (Sec'y Stat., ¶ 5.) HUD alleges Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$14,416.79 as the unpaid principal balance as of July 30, 2011;
- (b) \$6,018.04 as the unpaid interest on the principal balance at 6% per annum through July 30, 2011; and
- (c) interest on said principal balance from August 1, 2011 at 6% per annum until paid.

(Sec'y Stat., ¶ 5; Exh. C, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), ¶ 4.) A Notice of Intent to Collect by Treasury Offset dated June 27, 2011 was sent to Petitioner. (Dillon Decl. ¶ 9.)

## Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A, provides federal agencies with the remedy of administrative offset of federal payments for the collection of debts owed to the United States Government. In these cases, Petitioner bears the initial burden of submitting evidence to prove that the debt is not past-due or legally enforceable. 24 C.F.R. § 17.152(b); *Juan Velazquez*, HUDBCA No. 02-C-CH-CC049 (September 25, 2003).

In her Hearing Request, Petitioner stated:

First of all I filed for Chapter 13 bankruptcy in 1998. Secondly, this mortgage was refinanced a couple of times and it was my understanding that the second loan had to be paid off to refinance the mortgage. I have no idea where this went wrong or how this happened.

(Pet'r's Hr'g Req.) In support of her argument that she filed for Chapter 13 bankruptcy in 1998, Petitioner filed the following documents from the United States Bankruptcy Court, Middle District of Florida, Tampa Division: (1) *Final Decree*; (2) *Corrected Discharge of Debtor after Plan Completion of Chapter 13 Plan*; (3) *Trustee's Notice to Court's Completion of Payments under Confirmed Chapter 13 Plan*; and (4) *Trustee's Final Report and Accounting*.

The Secretary claims that “[n]either of Petitioner’s statements are evidence that HUD’s debt is legally unenforceable.” (Sec’y Stat., ¶ 7. With respect to Petitioner’s claim that the debt is unenforceable because she filed for Chapter 13 bankruptcy in 1998, the Secretary claims that although HUD’s claim was allowed by the bankruptcy trustee, the debt in this case was excluded from the bankruptcy discharge. (Sec’y Stat., ¶ 16.) The Secretary explains that, HUD, as The Money Store’s successor-in-interest, was a secured claim holder. (*Id.* at ¶¶ 9-10.) Pursuant to 11 U.S.C. § 1322(b)(2) the bankruptcy trustee may not modify the rights of a secured claim holder who holds a security interest in real property that is the debtor’s principal residence. As a result, HUD’s debt was excluded from the discharge as the discharge order specifically stated that debts provided for under 11 U.S.C. § 1322(b)(5) are not discharged. (Sec’y Stat., ¶ 16; Exh. G, Discharge Order, 2.)

Additionally, the Secretary notes that the last payment due on the Note is June 1, 2013. (Sec’y Stat., ¶ 17; Note.) Under 11 U.S.C. § 1322(b)(5), when the last payment due on the debt is to be made after the plan completion date, the bankruptcy plan may only provide for payments of arrears through the plan and maintenance of payments while the case is pending. Therefore, since the bankruptcy discharge occurred on March 14, 2003, Petitioner’s bankruptcy proceedings provided for payments of arrearages and could not have discharged or satisfied the entire debt in this case. Accordingly, this Office finds that Petitioner’s debt was not discharged pursuant to her Chapter 13 bankruptcy filing.

The Secretary also responded to Petitioner’s claim that the property had been refinanced “a couple times” and Petitioner’s “understanding” that the debt in this case had been paid off pursuant to the refinance transactions. Specifically, the Secretary argues that “Petitioner’s debt to HUD was not paid off as a result of her refinance. Rather, Petitioner paid down HUD’s debt and HUD subordinated its interest to Ameriquest Mortgage to permit the refinance of Petitioner’s home to go through.” (Sec’y Stat., ¶ 20.) Specifically, the Secretary notes that

On February 26, 2004, [Petitioner] paid, and HUD accepted, a lump sum payment of \$10,842 along with a payment plan for the balance of \$14,302.02 in exchange for HUD’s agreement to subordinate its mortgage lien to Ameriquest Mortgage.

(Dillon Dec., ¶ 8.)

This Office notes that Petitioner has not argued that the debt in this case was actually satisfied when she refinanced. Instead, Petitioner only claims that it was her “understanding” that the debt in this case “had to be paid off to refinance.” (Pet’r’s Hr’g Req.) Even if Petitioner were to maintain that she paid the debt in this case, this Office finds that Petitioner has not filed evidence of a release in writing from HUD or valuable consideration accepted by HUD, which would indicate an intent to release. *See In re Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). Accordingly, this Office finds that Petitioner is liable to the Department for the full amount of the debt in this case and that Petitioner has not filed documentary evidence proving that the debt was either discharged through Petitioner’s Chapter 13 bankruptcy, or otherwise paid in full.

**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.



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H. Alexander Manuel  
Administrative Judge

January 3, 2012