



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

In the Matter of:

Donna Roper,

Petitioner

HUDOA No. 11-M-NY-LL43
Claim No. 7-210014710A

DECISION AND ORDER

Petitioner, Donna Roper 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 August 1, 2011, Petitioner filed her Motion to Dismiss Confirmed Case (“Motion”), Case No. 07-21548, dated April 18, 2011, originally filed in the U.S. Bankruptcy Court, District of Connecticut, Hartford Division. The Motion was deemed to be 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. After receiving Petitioner’s hearing request, this Office temporarily stayed referral of the alleged debt in this case to the U.S. Department of Treasury for offset on August 4, 2011. (Notice of Docketing, Order and Stay of Referral (“Notice”), dated August 4, 2011.)

Background

On or before October 8, 2004, Petitioner defaulted on her mortgage and was threatened with foreclosure. (Secretary’s Statement, ¶2; Declaration of Brian Dillion, Director, Asset cover Division, Financial Operations of the U.S. Department of Housing and Urban Development, (HUD) at ¶3, Exhibit 3). HUD was the insurer of Petitioner’s home mortgage. *Id.*

As a means of providing foreclosure relief, HUD advanced funds to the FHA-insured lender to bring the Petitioner's mortgage current. (Dillion Decl. ¶3). In exchange for foreclosure relief, on October 8, 2004, Petitioner executed a Partial Claims Promissory Note ("Note") in the amount of \$6,824.37 in favor of the Secretary for the U.S. Department of Housing and Urban Development, (Sec'y Stat. ¶4, Exhibit A).

The Note cited specific events that made the debt become immediately due and payable. One of those events was, if the Petitioner paid, in full, all amounts due under the primary note and related mortgage insured by the Secretary. (Sec'y Stat. 5; Note at ¶3(A)(i)). On or about April 1, 2004, the FHA insurance on Petitioner's first mortgage was terminated when the lender notified the Secretary that the note was paid in full. (Sec'y Stat. ¶6; Dillion Decl. at ¶3, Note at ¶¶3(A)(i) and (iii)).

Upon payment in full of the primary note, Petitioner was required to make payment to HUD on the Note at the "Office of Housing-FHA Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, S.W., Washington, DC 20410 or any such other place as Lender agrees in writing...." (Sec'y Stat. ¶ 7; Note at ¶3, (B)).

Petitioner failed to make payments as agreed in the Note. HUD has attempted to collect on this debt, but Petitioner remains delinquent. (Sec'y Stat., ¶ 8.) The Secretary alleges Petitioner is justly indebted in the following amounts (Sec'y Stat. ¶9):

- (a) \$261.74 as the unpaid principal balance as of August 11, 2011;
- (b) \$15.40 as the unpaid interest on the principal balance at 4.0% per annum through August 11, 2011; and
- (c) interest on said principal balance from August 2, 2011, at 4.0% per annum until paid.

(Dillon Decl., ¶ 4.)

HUD sent A Notice of Intent to Collect by Treasury Offset, dated May 30, 2011, to Petitioner. (Sec'y Stat. 10; Dillon Decl., ¶ 5.)

In Petitioner's request for hearing, Petitioner alleges that HUD's debt was paid in full through her bankruptcy proceeding, which was dismissed on May 16, 2011. (Dillion Decl. Exh. C). In fact, HUD's debt was not paid in full. (Dillion Decl. Exh. B). Moreover, Petitioner's bankruptcy proceeding was dismissed by the U.S. Bankruptcy Court. There is no evidence of record documenting that Petitioner's remaining balanced owed to HUD was ever actually discharged by the U.S. Bankruptcy Court. (Dillion Decl. ¶7-8).

Petitioner commenced a Chapter 13 bankruptcy proceeding in the U.S. Bankruptcy Court, District of Connecticut, Harford Division, Case No. 07-21548, on October 31, 2007. HUD filed a Proof of Claim, as a secured creditor on December 17, 2007, in the amount of \$6,824.37 (principle) and \$250.25 (interest) for a total of \$7,074.62, (Sec'y Stat. ¶ 12). HUD's claim was received by the Court on December 26, 2007 (Sec'y Stat. 12; Dillion Decl. ¶6, Exhibit A).

Throughout the pendency of Petitioner's bankruptcy proceeding, Petitioner's debt to HUD continued to accrue interest at the rate of 8%. (Sec'y Stat. ¶13, View Claim ##006, Exhibit B, Dillion Decl.). Through March 15, 2011, The Trustee disbursed \$7,428.78 to HUD. However, only \$6,026.25 was credited towards the debt's principal of \$6,824.37. The remainder was credited towards interest. As of March 15, 2011, there was still a balance due on the principal indebtedness of \$797.72. (Sec'y Stat. ¶14; Dillion Decl. ¶7).

The Trustee's View Claim #006, indicates a status remark "Paid in Full Per Creditor." (Dillion Decl. ¶7, Exhibit B). However, HUD has no record of ever informing the Trustee that the claim was paid in full. The Secretary argues that the Trustee erroneously ceased payments to HUD before the claim was paid in full. (Sec'y Stat. ¶15). The Trustee filed a Motion to Dismiss Petitioner's bankruptcy proceeding on or about April 18, 2011. Based on the certificate of service for that motion, the Secretary argues that it does not appear that HUD was served with a copy of the motion. (Motion to Dismiss Confirmed Case, attached to Petitioner's Hearing Request); Sec'y Stat. ¶16.

Petitioner's bankruptcy proceeding was dismissed on May 15, 2011, and the bankruptcy stay was lifted. HUD therefore seeks repayment of the outstanding indebtedness. (Sec'y Stat. ¶17).

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 filing 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).

The Secretary has met his burden of proof to come forward with documentary evidence in support of his claim against Petitioner for the debt owed to HUD.

Petitioner, on the other hand, has failed to come forward with documentary evidence to prove that the alleged debt in this case was discharged by the U.S. Bankruptcy Court, or that the alleged debt is otherwise unenforceable. *See* Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), dated August 4, 2011. A second Order was issued on September 15, 2011, ordering Petitioner to file documentary evidence as initially sought in the Notice of Docketing. This Order stated that "[f]ailure to comply with this Order may result in a decision based on the documents in the record of this proceeding." (emphasis in original). (*Id.*) A third Order to Petitioner was issued on December 7, 2011, ordering Petitioner to file her documentary evidence on or before January 6, 2012, to prove that all or part of the alleged debt in this case is not past due or legally enforceable. Petitioner was specifically informed that this evidence may include proof that this claim has been discharged by the U.S. Bankruptcy Court for the District of Connecticut (Hartford) or that the claim was otherwise fully paid.

As of the date of this Decision and Order, Petitioner has yet to file any evidence in support of her claim that this debt was dismissed by the U.S. Bankruptcy Court, and therefore does not owe this debt. This Office has consistently 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, (Jun. 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (Jul. 3, 1996)). Considering Petitioner’s failure to provide documentary evidence to support her claim, this Office, finds that Petitioner’s argument must fail for want of proof.

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

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

March 21, 2012