



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

In the Matter of:

Henry E Barfield,
Petitioner

HUDOA No. 11-M-NY-LL49
Claim No. 7-807337020A

Henry E. Barfield Sr.
4085 NC HWY 55 W
Kinston, NC 28504

Pro se

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For the Secretary

DECISION AND ORDER

On August 30, 2011, Petitioner filed a request for a hearing concerning a proposed administrative offset relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "the Department") by Petitioner. The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3716), authorizes federal agencies to utilize administrative offset as a mechanism for the collection of debts owed to the United States government.

This case is conducted in accordance with the procedures set forth at 24 C.F.R. § 17.152. 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, and whether the Secretary may collect this debt via federal administrative offset. 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 August 30, 2011. (Notice of Docketing, Order and Stay of Referral ("Notice of Docketing"), issued August 30, 2011.)

Background

On September 5, 2007, Petitioner executed and delivered a Note to Domestic Bank in the amount of \$16,886.00, 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."), ¶ 2, filed September 14, 2011; Ex. A, Note.) The Note was subsequently assigned to the United States after Petitioner failed to make payment on the Note. (Sec'y Stat., ¶ 3; Ex. B.)

HUD has attempted to collect the alleged debt from Petitioner, but has been unsuccessful. (Sec'y Stat. ¶ 4; Ex. C, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), ¶ 4, dated April September 13, 2011.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$13,709.72 as the unpaid principal balance as of August 31, 2011;
- (b) \$383.39 as the unpaid interest on the principal balance at 1% per annum through August 31, 2011
- (c) \$880.92 as unpaid penalties and fees through August 31, 2011; and
- (d) interest on said principal balance from September 1, 2011 at 1% per annum until paid.

(Sec'y Stat., ¶ 4; Dillon Decl., ¶ 4.)

A Notice of Intent to Collect by Treasury Offset, dated July 25, 2011, was mailed to Petitioner. (Sec'y Stat. ¶ 5; Dillon Decl., ¶ 5.)

Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720, provides federal agencies with a means of collecting debts owed to the United States Government. Petitioner bears the initial burden of submitting evidence to prove that the alleged debt is unenforceable or not past due. 24 C.F.R. § 17.152(b).

Petitioner does not dispute the existence of the subject debt. (Petitioner's Hearing Request ("Pet'r's Hr'g Req., 1, filed August 30, 2011.) Rather, he asserts that the proposed offset will create significant financial hardship. (*Id.*) Petitioner also argues that because the loan was used to install a metal roof on Petitioner's home, the loan should be rolled into the primary home mortgage and not pursued independently by HUD. (*Id.*)

Petitioner states that an offset will force he and his wife to "live in poverty." (*Id.*) This Office acknowledges Petitioner's financial circumstances; however, the law provides "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 (February 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 (December 8, 1986). Petitioner here admits that the debt is valid and past due, but asks if there is a program by which the debt may be forgiven. (Pet'r's Hr'g Req., 1.) Unfortunately, no regulation or statute currently exists that permits financial hardship to be considered as a basis for determining whether a debt is past-due and enforceable in cases involving debt collection by means of administrative offset. Thus, consistent with case law precedent and statutory limitations, 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.


While this Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the HUD, Petitioners may wish to discuss this matter with either Counsel for the Secretary or Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206.

Petitioner next questions why the subject debt cannot be attached to the home loan, "so that when the mortgage company sells/forecloses on the home, it will be a part of the home package." (Pet'r's Hr'g Req., 1.) Petitioner appears to be making a policy inquiry rather than a legal argument. This Office is authorized only to determine whether the instant debt is past due and legally enforceable. (*See* 24 C.F.R. § 17.150 et seq.) As such, policy matters like those raised by Petitioner are not within the purview of this Office. Petitioner does not suggest that the terms of the Note in fact bind it to the primary home mortgage, nor does he offer any legal support for such an interpretation. As a result, there is no basis upon which this Office can provide the relief Petitioner requests. Upon review of all evidence in the record of this proceeding, I therefore find that the debt is past due and legally enforceable, and that Petitioner is indebted to HUD in the amount claimed by the Secretary.

ORDER

For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for federal treasury offset is **VACATED**.

It is hereby **ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of federal treasury offset to the extent authorized by law.



H. Alexander Manuel
Administrative Judge

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November 16, 2011
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