UNITED STATES OF AMERICA DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OFFICE OF HEARINGS AND APPEALS

In the Matter of:

Gladys Hollins,

Petitioner

HUDOA No.

Claim No.

12-H-CH-PP06

721007119-OA

DECISION AND ORDER

On August 31, 2011, Petitioner filed a hearing request after being 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.

The administrative judges of this Court have been designated to determine whether the alleged debt in contested administrative offset proceedings is enforceable against the debtor. The Office of Hearings and 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 Hearings and 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. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R § 285.11(f)(8)(i). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). In addition, Petitioner may present evidence that the terms of the repayment schedule are unlawful, would cause an undue financial hardship to Petitioner or that collection of the debt may not be pursued due to operation of law. *Id.*

Pursuant to 31 C.F.R. § 285.11(f)(4), on November 1, 2011, this Court stayed the issuance of an administrative offset until the issuance of this written decision. (Notice of Docketing, Order, and Stay of Referral, dated November 1, 2011, p. 2.)

BACKGROUND

On June 27, 2007, Petitioner executed a Subordinate Note ("Note") and Subordinate Deed of Trust to secure a partial claim paid on her behalf by the Secretary to pay the arrearages on her primary FHA-insured mortgage and avoid the foreclosure of her home. (Secretary's Statement, "Sec'y Stat.", ¶ 1, Ex. #1, Note). "The original amount to be repaid under this Note was \$6,088.93 and that, by the terms and conditions of the Note, it becomes due and payable when the original FHA mortgage matures, when the borrower pays the primary Note in full, when the maturity date of the primary Note has been accelerated, when the Note or related

security instrument is no longer insured by the Secretary or when the property is no longer occupied by the purchaser as his or her principal residence." $(Id., \P 2.)$

On or around July 15, 2009, the FHA mortgage insurance on the original Note and Security Instrument was terminated as the mortgage indicated the mortgage was paid in full. (Sec'y Stat., ¶ 3; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated November 10, 2011, ¶ 4.) Therefore, and pursuant to the terms and conditions of the Subordinate Note, the debt is now past due and legally enforceable. (Sec'y Stat., ¶ 4.)

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains in default. (Sec'y Stat., ¶ 5; Dillon Decl. ¶ 5.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$6,088.93 as the unpaid principal as of October 31, 2011;
- b) \$30.42 as the unpaid interest on the principal balance at 1% per annum through October 31, 2011;
- c) \$401.88 as the unpaid penalties and administrative costs as of October 31, 2011; and
- d) Interest on said principal balance from November 1, 2011, at 1% per annum until paid.

(Sec'y Stat., ¶ 6; Dillon Decl., ¶ 5.)

A Notice of Intent to Collect by Treasury Offset was mailed to Petitioner on August 1, 2011. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 6.) HUD acknowledged that the date of the debt on the Notice of Intent to Collect by Administrative Offset was listed incorrectly, and, that the correct date of the debt being incurred is June 27, 2007, and that date is accurately stated on the Note which was executed by Petitioner. (Sec'y Stat., ¶ 8; Dillon Decl., ¶ 6.) However, Petitioner was not harmed or injured by the scrivener's error related to the incorrect date identified on the Notice of Intent to Collect by Administrative Offset.

The Secretary respectfully submits that Petitioner's debt is past due and legally enforceable.

DISCUSSION

Petitioner may present evidence that: 1) the terms of the repayment schedule are unlawful; 2) collection would cause an undue financial hardship to Petitioner; or, 3) collection of the debt may not be pursued due to operation of law. (Id.) See 31 C.F.R. § 285.11(f)(8)(ii). Petitioner challenges collection of the alleged debt on the grounds that the debt was paid in full. (Petitioner's Hearing Request ("Pet'r Hr'g Req."), filed October 31, 2011). Here, Petitioner claims that she "contacted EverHome Mortgage Company for additional information available on the SF Partial Claim. Petitioner submitted a letter dated August 18, 2009 from EverHome

Mortgage Company to Petitioner that Loan No. 0000492868, for her property address, was paid in full on July 15, 2009." (Id., p.1) However, the evidence as presented by Petitioner was insufficient because it failed to prove that the subject debt was included in the amount reflected in the EverHome Mortgage letter to Petitioner.

The Secretary has, however, met his initial burden of proof to show that the alleged debt exists in the amount he claimed was owed by Petitioner. See 31 C.F.R. § 285.11(f)(8)(ii). The Secretary contends that Petitioner's debt became due when the first mortgage was paid in full. (Sec'y Stat., \P 3; Dillon Decl., \P 4.) Further the Secretary states that "Consistent with the terms and conditions of the Subordinate Note, the payment for the subject debt is now past due and legally enforceable." (Id.) As support, the Secretary submitted a copy of the Subordinate Note signed by Petitioner in which Petitioner accepted and agreed to the terms and covenants of the Subordinate Note. (Sec'y Stat., Ex.1, "Note").

Without more sufficient documentary evidence to support Petitioner's claim and better refute or rebut the Secretary's position, Petitioner's claim that the amount of the alleged debt is incorrect must fail for lack of proof. This Court has consistently maintained that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable." Darrell Van Kirk, HUDBCA No. 03-A-CH-AWG03 (January 27, 2003) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Therefore, I find that Petitioner's claim challenging the amount owed on the subject debt fails for lack of proof.

ORDER

The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative offset is **VACATED**. It is hereby

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

Vanessa L. Hall

Administrative Judge

March 30, 2012