

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

In the Matter of:

**Ronnie M. Conyer,**

Petitioner

HUDOA No. 12-H-CH-PP09

Claim No. 7-805143260A

May 15, 2011

**DECISION AND ORDER**

Petitioner was notified, pursuant to 31 U.S.C. §§ 3716 and 3720A, that the Secretary of the U.S. Department of Housing and Urban Development 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 November 7, 2011, Petitioner made a request for a hearing concerning the existence, amount, or enforceability of the debt allegedly owed to HUD. 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. § 17.61. 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. §§ 17.69 and 17.73. As a result of Petitioner's hearing request, this Court temporarily stayed referral of the debt to the U.S. Department of Treasury for offset on November 16, 2011. (Notice of Docketing, Order, and Stay of Referral (Notice of Docketing)). In response to the Notice of Docketing, Petitioner submitted documentary evidence on January 7, 2012 in support of his position. On May 4, 2012, the Court issued an Order for Documentary Evidence to the Secretary as the record did not reflect that documentary evidence had yet been submitted on behalf of the Secretary. In response, the Secretary, through counsel, filed his Statement on May 9, 2012. The record is now ripe for review by this Court.

**Background**

The nature of the debt alleged in this proceeding is a Retail Installment Contract. (Secretary's Statement ("Sec'y. Stat."), filed May 9, 2012, ¶ 1). After default by Petitioner, the Note was assigned to HUD by Federal National Mortgage Association under the regulations governing the Title I Insurance Program. (Declaration of Kathleen M. Porter, Acting Director, Asset Recovery Division, Financial Operations Center of HUD ("Porter Decl."), dated November 30, 2011, ¶ 3.)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains in default. (Secretary's Statement, ¶ 3, Ex. #2, Porter Decl., ¶ 4.) Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$11,466.18 as the unpaid principal balance as of October 30, 2011;
- (b) \$86.01 as the unpaid interest on the principal balance at 3% per annum through October 30, 2011; and
- (c) interest on said principal balance from October 30, 2011 at 3% per annum until paid.

(Sec'y. Stat., Ex. #2, Porter Decl. ¶ 4.)

A Notice of Intent to Collect by Treasury Offset dated October 17, 2011, was mailed to Petitioner. (Sec'y. Stat. ¶ 4; Porter Decl. ¶ 5.)

On March 5, 2002, the Bank of New York foreclosed on the improved property located in Goldwaite, TX. (Sec'y. Stat., Ex. #2, Porter Decl. ¶ 6.) The Bank of New York later sold the property to a third party to reduce its loss on the mortgage. (Id.)

### 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 administrative offset 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. § 17.69 (b); *Juan Velazquez*, HUDBCA No. 02-C-CH-CC049 (September 25, 2003).

Here, Petitioner contends that because of his divorce from his ex-spouse he is no longer responsible for the debt that is the subject of this proceeding. More specifically, Petitioner claims that in the divorce decree it states that "each party shall send to the other party, within three days of its receipt, a copy of any correspondence from a creditor or taxing authority concerning any potential liability of the other party." (Petitioner's Hearing Request, (Hr'g. Req.), filed November 7, 2011.) Petitioner further claims that "I never received anything," and that according to the divorce decree his ex-spouse "shall indemnify and hold the husband and his property *harmless from any failure to so discharge, including any and all debts, charges, liabilities and other obligations incurred solely by the wife.*" (Emphasis added.) (Hr'g. Req.) As support, Petitioner submitted for examination a copy of the divorce decree.

The Secretary contends, however, that "Petitioner's claim that his divorce released him from all obligations under the Note is incorrect." (Sec'y. Statement, ¶ 5.) As support, the Secretary cites case law precedent in which it was previously held that "a divorce decree purporting to release Petitioner from a joint obligation does not affect the of [sic] an existing creditor unless the creditor was a party to the action." (Id.) An examination of the divorce decree submitted by Petitioner shows that Petitioner was not at all released from his legal obligation to pay the alleged debt.

The Secretary's position is accurate and consistent with what this Court has previously held. As a general rule, co-signers of a loan are jointly and severally liable to the obligation, and as a result, "a creditor may sue the parties to such obligation separately or together." *Mary Jane Lyons Hardy*, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). Petitioner has not been released from his legal obligation to pay the alleged debt based upon the terms and provisions of the divorce decree. The Secretary's right to collect the alleged debt in this case instead emanates from the terms of the Note, not the terms of the divorce decree. *Bruce R. Smith*, HUDBCA No.

07-A-CH-AWG11 (June 22, 2007). “The Secretary may proceed against any co-signer for the full amount of the debt because each co-signer is jointly and severally liable.” *Hedieh Rezai*, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). For Petitioner not to be responsible for the subject debt he must submit produce evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release him from his obligation. *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); *William Holland*, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (October 4, 1999); *Valerie L. Karpanai*, HUDBCA No. 87-2518-H51 (January 27, 1988); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986).

In this case, Petitioner has failed to produce evidence of a written release from his obligation to pay the alleged debt or produce evidence of valuable consideration paid to HUD in satisfaction of the alleged debt. While Petitioner may be divorced from his ex-spouse, neither the Secretary nor the lender was a party to that divorce proceeding. Therefore, without proof of a written release, I find that Petitioner, as a co-signor on the Note, remains legally obligated to pay the subject debt. As a recourse, Petitioner may seek to enforce, in the state or local court, the divorce decree that was granted against his ex-spouse so that Petitioner may recover from her the monies he paid to HUD in order to satisfy this legal obligation. See *Michael York*, HUDBCA No. 09-H-CH-AWG36, dated June 26, 2009, at 3.

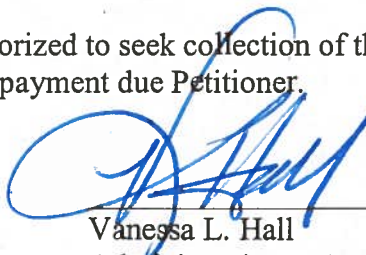
Petitioner next requested that he would “like to know how the property was sold at auction when the home had a HUD loan,” and states that “[t]he title should have showed that there was a lien on the property and as such the lien should have been satisfied when the property was sold.” (H’rg. Req.) Petitioner further states that “I do not feel that I am further obligated with the HUD loan that should have been resolved when the property [was] sold [.] [S]ince the additional loan was attached to the property, this loan should have been satisfied before the property could even be sold.” (Petitioner’s e-mail (Pet’r’s Jan. 7<sup>th</sup> E-mail), filed January 7, 2012.) Petitioner has failed, however, to submit documentary evidence that proves that all indebtedness has been satisfied by the proceeds from a previous foreclosure. 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 and or unenforceable.” *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Thus, I find that Petitioner’s claim fails for lack of proof.

Petitioner finally contends “if this is not resolved in my favor, I at least ask that I can make payments by the month that I can afford as I have had to start completely over at fifty years of age.” (Petitioner’s Jan. 7<sup>th</sup> E-mail.) While this Office is not authorized to extend, recommend, or accept any payment plan, or consider any settlement offer on behalf of HUD, Petitioner may wish to discuss this matter with either Counsel for the Secretary, or submit a HUD Office Title I Financial Statement (HUD Form 56142) to Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152.

**ORDER**

Based on the foregoing, 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.



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Vanessa L. Hall  
Administrative Judge