

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

In the Matter of:

Autumn Choate Ewart,

Petitioner

HUDOA No. 12-H-CH-PP25
Claim No. 7-807201960A

November 20, 2012

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 February 1, 2012, Petitioner requested a hearing concerning the existence, amount, or enforceability of the debt allegedly owed to HUD.

Applicable law

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 Appeals, in accordance with the procedures set forth at 24 C.F.R. §§ 17.69 and 17.73, have been designated to conduct a hearing to determine whether the alleged debt is past due and legally enforceable.

Procedural Background

In response to the Notice of Docketing and a subsequent Order issued to Petitioner on April 13, 2012, Petitioner submitted documentary evidence on April 22, 2012, and May 4, 2012, in support of her position. In response to an Order issued by the Court to the Secretary on May 10, 2012, the Secretary, through counsel, filed his Statement on May 11, 2012. The record is now ripe for review by this Court.

Findings of Fact

On or about January 9, 2003, Petitioner executed and delivered to Vanderbilt Mortgage and Finance Inc., a Retail Installment Contract and Security Agreement ("Note") in the amount of \$33,117.95. (Secretary's Statement (Sec'y Stat.), ¶ 1, Ex. A, dated May 22, 2012; Ex. B, Declaration of Brian Dillon, (Dillon Decl.), Director, Asset Recovery Division, Financial Operations Center of HUD, ¶ 3.) HUD now holds the Note, which is signed by Petitioner. (Dillon Decl., ¶ 3.) After default by Petitioner, the Note was assigned to HUD by Vanderbilt

Mortgage and Finance, Inc., under the regulations governing the Title I Insurance Program (Dillon Decl., ¶ 3.)

A Notice of Intent to Collect by Treasury Offset, dated June 14, 2010, was sent to Petitioner. (Petitioner's Hearing Request ("Pet'r's Hr'g. Req."), Attachment.) On January 31, 2011, Petitioner's federal tax return was offset in the amount of \$6,182.00. It was subsequently brought to the Court's attention that Petitioner had in fact timely filed an appeal on June 24, 2010, and as such had indicated "an intent to appeal HUD's determination to collect this debt by an IRS offset." (Pet'r's Hr'g Req.) The Court determined that, in accordance with 24 C.F.R. §§ 17.69(b) and (c), Petitioner must be extended the opportunity to present evidence in support of her position because she had not yet been granted the opportunity to do so. As a result, pursuant to 24 C.F.R. § 17.75(b), the Court granted Petitioner leave to submit evidence in support of her position. (Notice of Docketing, Order, and Stay of Referral, dated February 10, 2012.)

On March 9, 2012, in compliance with the Court's Order, Petitioner filed a declaration setting forth her contentions and relevant legal arguments. (Pet'r's Petition.) On May 23, 2012, the Secretary filed his Statement and supporting documentary evidence. The Secretary therein informed the Court that Petitioner's debt has been paid in full. (Sec'y. Stat.)

Discussion

Pursuant to 24 C.F.R. § 17.69(b) the initial burden is on Petitioner to submit evidence proving by a preponderance of the evidence that all or part of the alleged debt is not past due or not legally enforceable. 24 C.F.R. § 17.69(c). In this case, Petitioner does not deny that the debt that is the subject of this proceeding is not owed or past due. Instead Petitioner raises several claims challenging the enforceability of the subject debt.

Petitioner first alleges that after approximately three years after she moved into the manufactured home, she began "noticing watermarks on the walls." (Pet'r's Petition; Attached Petitioner's Affidavit, ("Pet'r's Affid."), p. 1, filed March 9, 2012.) Petitioner noted that in September of 2006, she "received a letter from Clayton Waco/CMH Manufacturing notifying me that there was a problem with water migration into the exterior wall cavity due to an omitted trim connection." (*Id.*) Petitioner claimed that she contacted the manufacturer and that the manufacturer "attempted repairs which were not done correctly or completely although they misrepresented to me that they had fixed the problems." (*Id.*, p. 2.) Petitioner further claimed that the home was "deteriorating," and "smelled of mold," and that "you could push your finger through portions of the rotted wood." Petitioner also contends that, "Although HUD had notice of the defects in Petitioner's manufactured home, HUD has produced no documentation in this case concerning such defects." (Pet'r's Petition, ¶ 1.)

As support, Petitioner provided copies of photographs of certain areas of the mobile home allegedly showing examples of rot, mold and improper repairs. (Pet'r's Affid.; Attachments.) Petitioner also produced as evidence a copy of a Consumer Complaint Form she allegedly filed with the Texas Department of Housing and Community Affairs Manufactured Housing Division (Texas Department) in December, 2007. (Pet'r's Affid., ¶ 1; Ex. D.) However, Petitioner failed to present evidence that a subsequent investigation was conducted by

the Texas Department or that the Department produced a report of its findings and resolution regarding the subject of Petitioner's complaints. Without such evidence, the Court finds that such claims as alleged are unpersuasive and unsubstantiated, and thus Petitioner's claim fails for lack of sufficient and credible evidence.

Next, Petitioner claims that "In 2007, my son was diagnosed with a chronic strep infection. He developed respiratory problems, including sore throat and wheezing, while we were living in the manufactured home." (Pet'r's Affid., p. 2.) As support, Petitioner provided a copy of a medical report from the Pediatric Infectious Disease Specialists of Houston, Pa. The medical report does not indicate or suggest that Petitioner's child's illness was linked to the mold organisms in the manufactured home.

As further support, Petitioner referenced a HUD publication entitled *Health Home Issues*, Version 3, March, 2006, HUD Office of Health Homes and Lead Control, National Institute of Environmental Health Sciences – Mold (July 14, 2010). This report does not provide sufficient evidence to substantiate Petitioner's claim that her child's health condition was directly linked to the condition of her manufactured home. Therefore, I find that Petitioner has failed to meet her burden of proof to produce sufficient and credible evidence in support of her claim.

Petitioner also claims that the Seller violated the Texas Deceptive Trade Practices—Consumer Protection Act ("DTPA") "in connection with sale, and improper and incomplete repairs to Petitioner's manufactured home." (Pet'r's Petition, ¶ 3.) Petitioner does not provide any documentary evidence of findings made by the Texas Department substantiating that the alleged DTPA violations were actually committed. The Court's responsibility here is to determine whether the alleged debt is past due and enforceable. Based upon the record, I find that Petitioner has not introduced sufficient and credible evidence that proves to the Court the existence of DTPA violations or proves that the existence of such violations renders the alleged debt unenforceable.

Fourth, Petitioner requests an appropriate order be entered protecting the medical privacy of her child in this proceeding. Petitioner's request for such order is **DENIED** as moot, as such information is irrelevant and immaterial in assessing whether the alleged debt was enforceable or past due.

Fifth, Petitioner states that "the complaint filed by Petitioner with the State of Texas which the notary dated December 4, 2007, shows Petitioner's written direct complaints to the State of Texas." (Pet'r's Petition, ¶ 8.) Again, while Petitioner alleges that she made written direct complaints to the State of Texas, Petitioner has failed to provide documentary evidence that substantiates any findings the Texas Department may have established based upon Petitioner's allegations. Thus I find that this claim fails for lack of credible and sufficient evidence.

Finally, Petitioner claims that she has "sufficiently proven her case as required by 31 C.F.R. § 285.11(f) and that an evidentiary hearing should not be necessary because the Secretary has failed to rebut Petitioner's position." (Pet'r's Petition, ¶ 9.) Petitioner's citation to 31 C.F.R. § 285.11 is misplaced here, as the cited provision only governs cases involving collection

by means of administrative wage garnishments. The present case involves collection by means of administrative offset, and is governed by 24 C.F.R. § 17.69 (b). Under § 17.69 (b), the initial burden of proof falls on Petitioner to show that all or part of the debt is not past due or not legally enforceable. In this case, Petitioner has failed to meet her burden of proof required under § 17.69 (b) by not providing sufficient and credible evidence of her claims.

The Secretary submits that “Petitioner’s debt, while presently paid in full, was past due and legally enforceable on January 31, 2011,” the date Petitioner’s tax refund in the amount of \$6,182.00 was offset. As support, the Secretary produced a copy of the Note, bearing Petitioner’s signature, in which Petitioner agreed to “pay all amounts due on this contract until all amounts due on this contract are paid in full.” (Sec’y. Stat.; Ex. A, p. 4.) By signing the contract, Petitioner “acknowledges that the Buyer has examined the Manufactured Home...,” and further understood that “Except to the intent expressly stated herein, or as otherwise required by law, no assignee of this contract shall be liable, either in tort or contract, for any direct or indirect damages or for any special, incidental, or consequential damages arising out of or in connection with this contract or transaction.” (*Id.*)

Here, Petitioner has failed to produce sufficient and credible evidence that either rebuts or refutes the evidence as presented by the Secretary. Without such evidence, Petitioner’s claim fails for want of proof.

ORDER

Based on the foregoing, I find that the debt was legally enforceable against Petitioner at the time of the offset. However, in this case, since the debt has now been PAID IN FULL, it is hereby

ORDERED that the Secretary is no longer authorized to seek collection of this outstanding debt by means of administrative offset of any federal payment due Petitioner.

/o/ original signature
Vanessa L. Hall
Administrative Judge