

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS
WASHINGTON, D.C. 20410

In the Matter of:

Ronnie E. Pollard,

Petitioner

HUDOA No. 12-H-NY-PP03

Claim No. 7-803007590A

Date: May 4, 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 October 4, 2011, Petitioner made 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. § 17.81(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. §§ 17.69 and 17.73. 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 October 4, 2011. (Notice of Docketing, Order, and Stay of Referral, ("Notice of Docketing"), issued October 4, 2011.)

Background

On February 21, 1996, Petitioner executed and delivered a Note to Pool Mortgage Services, Inc. in the amount of \$15,000.00, 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.), filed March 13, 2012, ¶ 2.) Contemporaneously, on February 21, 1996, the Note was assigned by Pool Mortgage Services, Inc. to First Financial Funding, Inc. (*Id.* at p. 2.) Consequently, in accordance with 24 C.F.R. § 201.54, on January 11, 2001, Norwest Home Improvement, Inc. /f/k/a/ First State Bank assigned the Note to the United States of America. (Sec'y. Stat., ¶ 5.) The Secretary is the holder of the Note on behalf of the United States of America. (*Id.*)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains in default. Petitioner is indebted to HUD on the Note in the following amounts:

- (a) \$13,776.74 as the unpaid principal balance as of February 29, 2012;
- (b) \$8,277.81 as the unpaid interest on the principal balance at 5% per annum through February 29, 2012;
- (c) interest on said principal balance from March 1, 2012 at 5% per annum until paid.

(Sec'y Stat. ¶ 6, Ex. C, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), dated March 9, 2012, ¶ 4.)

A Notice of Intent to Collect by Treasury Offset dated September 5, 2011, was sent to Petitioner. (Sec'y Stat. ¶ 7; Dillon Decl. ¶ 5.)

Discussion

In this case, Petitioner claims that the debt does not exist because it was included as a part of his bankruptcy proceeding. Petitioner more specifically states that "this debt was a part of my bankruptcy and I will be forwarding you more documentation concerning this next week." Petitioner did not provide proof that the alleged debt was discharged during the bankruptcy proceedings, but instead he provided proof that he extended a settlement offer to the Secretary for the alleged debt in the amount of \$1200.00.

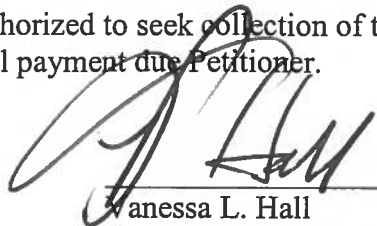
The Secretary states, however, that the alleged debt remains "past due and legally enforceable against Petitioner" and that Petitioner's "compromise offer of \$1200.00 to settle the debt in full is unacceptable to HUD." (Sec'y. Stat., ¶ 11.) But, HUD "responded with a counteroffer of \$6500.00 (*Id.*) The Secretary further stated that "Petitioner had until April 5, 2012 to submit the funds to complete the offer." (*Id.*) To date, there is no indication in the record of this proceeding that Petitioner has either responded with an acceptance of the Secretary's counteroffer, or responded by producing evidence that would otherwise show that the alleged debt was discharged in bankruptcy.

As the record reflects, Petitioner has not produced evidence sufficient enough to meet his burden of proof that the debt does not exist due to bankruptcy, or because a settlement has been reached between Petitioner and the Secretary. This Office 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)). Therefore, the Court finds that Petitioner's claim fails for lack of sufficient proof.

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.



Vanessa L. Hall
Administrative Judge