

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

In the Matter of:

Mary Thomas Proud,
Petitioner

HUDOA No. 12-H-NY-PP08
Claim No. 7-210041840A
Date: 04-27-2012

DECISION AND ORDER

On October 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 from 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. §17.81(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. §§ 17.69, 17.73. 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.)

BACKGROUND

On or about February 11, 2004, a HUD-insured loan on Petitioner’s home was in default, and Petitioner was threatened with foreclosure. . (Secretary’s Statement, “Sec’y Stat.”, ¶ 2; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated January 23, 2012, ¶ 3, ¶ 4.) To prevent the lender from foreclosing, HUD advanced funds to Petitioner’s lender to bring the primary note current. *Id.* In exchange for foreclosure relief, Petitioner executed a Subordinate (“Note”) in the amount of \$7,559.72 in favor of the Secretary on February 11, 2004. (Sec’y Stat., ¶ 4; Dillon Decl. ¶ 4;

Exhibit B, Note). The Note cited specific events that made the debt become due and payable, one of those events being if the Petitioner has paid in full all amounts due under the primary note and related mortgage insured by the Secretary. On or about December 13, 2005 the FHA Insurance on the first mortgage terminated, as the lender indicated the mortgage was paid in full. (Sec'y Stat., ¶ 5; Dillon Decl. ¶ 4, Note at ¶ 4(A)(i)).

Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the U.S. Department of HUD. (Note at ¶ 4(B)). Petitioner failed to make payment on the Note as specified. Consequently, Petitioner's debt to HUD is delinquent. (Sec'y Stat., ¶ 8).

The Secretary has attempted to collect the amounts due under the Note, but Petitioner remains in default. (Sec'y Stat., ¶ 9; Dillon Decl. ¶ 5.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$7,559.72 as the unpaid principal as of December 31, 2011;
- b) \$1,411.20 as the unpaid interest on the principal balance at 4% per annum through December 31, 2011 and;
- c) \$673.54 as the unpaid penalties and administrative costs as of December 31, 2011; and
- d) Interest on said principal balance from January 1, 2011, at 4% per annum until paid.

(Sec'y Stat., ¶ 9; Dillon Decl., ¶ 5.)

A Notice of Intent to Collect by Treasury Offset was mailed to Petitioner on October 1, 2011. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 6.)

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

DISCUSSION

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), 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. Petitioner challenges collection of the alleged debt on the grounds that the debt was paid in full because her "financial obligation to HUD was satisfied when she received a Release of Mortgage from Bank of America [Petitioner's Primary Lender]." (Petitioner's Hearing Request ("Pet'r Hr'g Req."), filed October 31, 2011).

As support, Petitioner produced a copy of the Release of Mortgage dated December 23, 2005 in which Bank of America, N.A. acknowledged full payment and satisfaction of a note in the principal sum of \$124,019.00. (Pet'r Hr'g Req., Attach.) But, the evidence as presented by

Petitioner is insufficient because it failed to prove that the subject debt was included in the amount reflected as paid in full in the letter Bank of America sent 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., ¶ 6; Dillon Decl., ¶ 4.) Further the Secretary states that: "the release of mortgage provided by Petitioner specifically states that it was issued by Bank of America, not HUD, and pertains to a mortgage executed by Petitioner on September 27, 2001, and recorded with the county clerk's office at Book R2561, Page 00572 on October 2, 2001. (Pet'r Hr'g Req., Attach.)

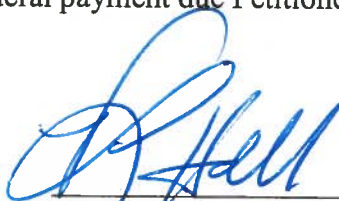
As support the Secretary produced a copy of the Subordinate Note in which it stated that the Subordinate Mortgage was executed as of February 11, 2004 and was recorded with the county clerk's office at Book 3050, Page 1004 on March 12, 2004. (Sec'y Stat., ¶ 13; Ex. C, "Subordinate Note.") Consistent with the terms and conditions of the Subordinate Note, the payment for the subject debt is now past due and legally enforceable against Petitioner because it is considered a debt that is separate and distinct from the debt associated with the release issued by Bank of America. In this case, only HUD has the authority to issue a release of mortgage for the debt that is the subject of this proceeding. (Sec'y Stat., ¶ 14; Note at ¶ 4(A)).

Without sufficient documentary evidence to refute or rebut the Secretary's position, Petitioner's claim that the amount of the alleged debt is non-existent 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 and, as a result, Petitioner remains legally obligated to pay the subject debt in the amount claimed by the Secretary.

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