

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

In the Matter of:

Stephen A. Kennedy and Deborah J. Kennedy,

Petitioner

HUDOA No.: 12-H-NY-PP19

Claim No. 7-802809690A
7-802809690B

July 26, 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 December 12, 2011, Petitioner filed a request for hearing a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“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 HUD Secretary has designated the administrative judges of this Office to conduct a hearing to determine whether the disputed debt is past due and legally enforceable. 24 C.F.R. §§ 17.69 and 17.73. This hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

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 December 29, 2011. (Notice of Docketing, Order, and Stay of Referral, issued December 29, 2011).

In response to the Notice of Docketing, and a subsequent Order issued to Petitioner on March 9, 2012, Petitioners submitted documentary evidence on April 22, 2012 and May 4, 2012 in support of their 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.

Background

This action is brought on behalf of the Secretary of the United States Department of Housing and Urban Development (“Secretary” or “HUD”) pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703.

On October 8, 1996, Petitioners executed and delivered a Home Improvement Retail Installment Contract and Security Agreement (“Note”) to JVIG Corporation d/b/a Dream Home Remodeling, Inc. in the amount of \$6,890.00. (Secretary’s Statement (Sec’y Stat.), filed March 13, 2011, ¶ 2, Home Improvement Retail Installment Contract and Security Agreement - Exh. A) The Note was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. Contemporaneously, JVIG Corporation d/b/a Dream Home Remodeling, Inc. assigned the Note to Green Tree Consumer Discount Company. (Sec’y Stat., ¶ 3, Exh. A, p. 2)

Petitioner failed to make payment on the Note as agreed. Consequently, in accordance with 24 C.F.R. § 201.54, on January 23, 2000, Conesco Finance Servicing Corp. f/k/a Green Tree Financial Servicing Corp. assigned the Note to the United States of America. (Sec’y Stat., ¶ 4, Exh. B). The Secretary is the holder of the Note on behalf of the United States. (Sec’y Stat., ¶ 4)

The Secretary has made efforts to collect this debt from Petitioners, but has been unsuccessful. As a result, Petitioner remains in default on the Note. Petitioners are justly indebted to the Secretary in the following amounts.

- (a) \$3, 789.60 as the unpaid principal balance as of April 30, 2012;
- (b) \$361.91 as the unpaid interest on the principal balance at 6.0% per annum through April 30, 2012; and
- (c) Interest on said principal balance from May 1, 2012 at 6.0% per annum until paid.

(Sec’y Stat., ¶ 5, Declaration of Kathleen Porter (“Porter Declaration”) at ¶ 4 – Exh. C)

A Notice of Intent to Collect by Treasury Offset dated July 18, 2011 was sent to each Petitioner. (Sec’y Stat., ¶ 6, Porter Declaration at ¶ 5) HUD filed a secured claim in Petitioners’ bankruptcy proceeding on October 14, 2003. (Sec’y Stat., ¶ 9, Porter Declaration at ¶ 6, Exh. A) HUD’s Proof of Claim showed that the total outstanding indebtedness at the time the claim was filed was \$6,841.64 with interest accruing at 6%. The total arrears at the time of filing were \$4, 257.00. (*Id.*)

The Proof of Claim-Secured attached to Petitioners’ hearing request was filed by the Pennsylvania Housing Finance Agency and is not related to Petitioners’ indebtedness to HUD. Sec’y Stat., ¶ 10, Exh. A). Petitioners’ indebtedness to HUD is secured by a mortgage on 102 S. 6th Avenue, Coatesville, Pennsylvania, which is, upon information and belief, Petitioners’ Principal residence. (Sec’y Stat., ¶ 11, Mortgage – Exh. E)

Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A, provides Federal agencies with a remedy for the collection of debts owed to the United States Government. Petitioner bears the

initial burden of submitting evidence to prove that the debt is not past-due or legally enforceable. 24 C.F.R. § 17.152(b); *Juan Velazquez*, HUDBCA No. 02-C-CH-CC049 (September 25, 2003).

In this case, Petitioners challenge the existence of their alleged debt by claiming that their debt was discharged by bankruptcy under their Chapter 13 Bankruptcy Plan. (Pet'r.'s Hr'g. Req., p. 1). As support, Petitioners filed a Chapter 13 Final Report (Final Report) issued by the U.S. Bankruptcy Court for the Eastern District of Pennsylvania on July 10, 2003. (*Id.*, Hearing Request, Attach.).

The Secretary states, however, that Petitioners are mistaken. (Sec'y Stat., ¶ 7.) Instead the Secretary claims that the Final Report referred to by Petitioners states with specificity the amount of debt that was discharged without payment. (Sec'y Stat., ¶ 17, Pet'r.'s Hr'g. Req.; "Final Report and Account" at p.1). "Only unsecured debt totaling \$61,310.23 was so discharged." (*Id.*) The Secretary further states that Petitioners' bankruptcy plan did not modify the rights of secured claim holders holding a security interest (i.e., a mortgage lien) in real property that is the debtor's principal residence according to 11 U.S.C. § 1322(b)(2) and (b)(3). (Sec'y Stat., ¶ 14) While it is not specifically delineated on Petitioners' Final Report, the Secretary states upon information and belief that Petitioners' debt to HUD was administered through the plan pursuant to 11 U.S.C. § 1322(b)(5). (Sec'y Stat., ¶ 18.) The plan called for the curing of the default through the payment of arrears over the life of Petitioners' bankruptcy plan. (*Id.*)

Pursuant to 11 U.S.C. § 1322 (a)(3), if a debtor's bankruptcy plan classifies claims, the plan must provide for the same treatment of each claim within the class. 11 U.S.C. § 1322(b)(5) provides that debtors cure the default on long-term debts through the bankruptcy plan while making ongoing payments directly to their creditors. Here, Petitioners' debt is classified on the Final Report as "Mortgage Arrearage" payments on secured debts, along with their primary mortgage held by Countrywide Home Loans. (*See* Pet'r.'s Hr'g. Req., Attached Final Report, p.2; Sec'y Stat., ¶ 13.) Although Petitioners paid the arrears through the plan, the record does not show that Petitioners continued to make ongoing installment payments directly to HUD during the pendency of their bankruptcy proceeding, as required under 11 U.S.C. § 1322(b)(5).

A review of the Final Report shows that Petitioners paid arrearages through the bankruptcy plan in the amount of \$4,257.00, an amount that is identical to the amount of arrearage HUD reported as owed on its Proof of Claim. (*See* Pet'r.'s Hr'g. Req., Attached Final Report, p.2, ¶ 5; Sec'y Stat., ¶ 15.) But, there is no indication from the record that HUD's mortgage lien was paid directly to HUD or discharged by order of the Court. It should also be noted that HUD's claim remained secured. As a result, Petitioners were not released from their legal obligation to pay the debt that is the subject of this proceeding.

Order

For the reasons set forth above, I find that the subject debt is legally enforceable against Petitioners in the amount claimed by the Secretary.

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

ORDERED that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative offset of any payment due Petitioners.

/s/ original signature
Vanessa L. Hall
Administrative Judge