

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

In the Matter of:

JERRY AND DORY KIZZEE,

Petitioners

HUDOA No. 12-M-CH-PP16

Claim No. 780058472

Dated: May 9, 2012

DECISION AND ORDER

Jerry and Dory Kizzee (“Petitioners”) were 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 to Petitioners in satisfaction of a delinquent and legally enforceable debt allegedly owed to HUD.

On November 28, 2011, Petitioners filed their request for 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 Petitioners’ debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.61, *et seq.* 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. After receiving Petitioners’ hearing request, this Office temporarily stayed referral of the alleged debt in this case to the U.S. Department of Treasury for offset on December 19, 2011. (Notice of Docketing, Order and Stay of Referral (“Notice”), dated December 19, 2011).

Background

On or about June 18, 1993, Jerry and Dory Kizzee, (Petitioners) executed and delivered to Vanderbilt Mortgage and Finance, Inc., a Retail Installment Contract – Security Agreement (“Note”) in the amount of \$28,700.00, which was insured against nonpayment by the Secretary, pursuant to Title 1 of the National Housing Act, 12 U.S.C. § 1703 (Sec’y Stat. ¶ 2, Exh. A); Declaration of Gary Sautter, Director, Asset Recovery Division, Financial Operations Center of the U.S Department of Housing and Urban Development (HUD) at ¶2-3, Exh. B).

Petitioners failed to make payments on the Note as agreed. In accordance with 24 C.F.R. § 201.54, Vanderbilt Mortgage and Finance, Inc., assigned the Note to the United States of America. The Secretary is the holder of the Note on behalf of the United States of America. (Sec’y Stat. ¶4, Exh. B, ¶ 3, and Exh. A).

Petitioners are currently in default on the Note. The Secretary has made efforts to collect this debt from the Petitioners, but has been unsuccessful. Petitioners are indebted to the Secretary in the following amounts:

- (a) \$3,041.09 as the unpaid principal balance as of November 30, 2011;
- (b) \$1,258.44, as the unpaid interest on the principal balance at 5.0% per annum through November 30, 2011; and
- (c) interest on said principal balance from December 1, 2011, at 5.0% per annum until paid.

(Sec'y Stat. ¶7; Sautter Decl. ¶4, Exh. B).

A Notice of Intent to Collect by Treasury Offset dated, August 8, 2011, was sent to Petitioners. (Sec'y Stat. ¶ 6; and Sautter Decl., ¶5, Exh. B).

In Petitioners' request for hearing, dated November 21, 2011, Petitioners do not deny the existence of the debt or challenge the legal enforceability of the debt. Rather, Petitioners allege that they are unable to pay HUD's debt due to financial hardship. Unfortunately, evidence of financial hardship is not relevant in an administrative offset action. *See, In the Matter of Teresa Swasey, HUDOA 08-M-NY-JJ39*, at p.4, dated February 25, 2009.

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 these 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).

On November 28, 2011, this Office received a letter from Petitioners that was deemed to be a Request for Hearing. (Pet'r's Hr'g Req.). In their letter, Petitioners stated:

“We are financial unable to pay on this debt at this time. Jerry Kizzee social security benefits is [sic] only \$846.00 a month after the offset from social security. Dory Kizzee take home pay a mouth (sic) is \$1,611.00. Here is a list of all the monthly household and medical bills that we pay a mouth (sic):

Lights \$250.00, Clear net \$51.69, Life ins. \$46.14, City of Arcola \$16.00, Cable \$100.00, Car note \$340.00, Home phone \$58.00, House gas \$56.00, Repay food stamps \$50.00, Car ins. \$124.12, Food \$400.00, Car gas \$150.00, Household goods \$200.00, Jerry meds \$100.00, Dory hospital bill \$325.00m, missile's \$146.25, a total of \$2,413.00 and all tax return go to the I.R.S.”

(Pet'r's Hr'g Req., dated November 21, 2011).

On March 22, 2012, this Office ordered Petitioners to file, on or before April 16, 2012, documentary evidence proving that all or part of the alleged debt in this case is not past due or not legally enforceable against Petitioners. (Order for Documentary Evidence, dated March 22, 2012.) The Order required Petitioner to file specific documentary evidence, such as pay statements, proof of actual payment for household expenses, e.g., receipts, bank statements, and copies of checks, money orders, for payment of mortgage payments, rent, food, transportation, necessary medical expenses, and other basic household necessities. The Order also stated that “Failure to comply with this order may result in a decision in favor of the opposing party or the imposition of sanctions in accordance with the discretion of the Administrative Judge and the documents of record in this proceeding.” (emphasis in original). Petitioners have failed to file any such evidence and have, therefore, failed to comply with the Order issued by this Office.

Petitioners, therefore, have not proven that the debt in this case is not past due or legally enforceable. In the absence of documentary evidence to support Petitioners' position, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioners as set forth in the Notice of Intent to Collect by Treasury Offset.

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be 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 federal payment due Petitioner.



H. Alexander Manuel
Administrative Judge

May 9, 2012