

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

In the Matter of:

MIRIAM M. NEAL,
Petitioner

Judge H. Alexander Manuel

HUDOA No. 12-M-NY-PP07
Claim No. 7-210061950A

Date of Order: May , 2012

DECISION AND ORDER

Miriam M. Neal ("Petitioner"), was notified, on or about September 26, 2011, 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 collect a debt allegedly owed to HUD by seeking administrative offset of federal payments due to Petitioner. HUD alleges that the debt is currently delinquent and is legally enforceable against Petitioner.

On or about October 31, 2011, Petitioner requested a 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 Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.69. 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. 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 November 2, 2011 (Notice of Docketing, Order and Stay of Referral, dated November 2, 2011.)

Background

Petitioner does not deny liability for the debt in this case. Instead, Petitioner states that she is unemployed, that she "hopes to get back to work soon," and that she hopes to "set up monthly payments at that time." Petitioner's letter, dated September 18, 2011 (and filed on October 31, 2011)(Pet's Ltr., p. 1). In response the Secretary states that:

In a tax/administrative offset action such as this, the only inquiry for the Court is whether the debt is past due and legally enforceable. Unfortunately, evidence of financial hardship, no matter how compelling, cannot be taken into consideration. *See In the Matter of Teresa Swasey*, HUDOA No. 08-M-NY-JJ39, at p.4 (February 25, 2009)(citations omitted).

Secretary's Statement ("Sec'y Stat."), ¶ 12.)

Subsequent to the dismissal of the first bankruptcy proceeding, Petitioner executed the Subordinate Note that is the subject of this case on October 24, 2005 in the amount of \$4,702.84. (Sec'y Stat., ¶ 2.) The Subordinate Note states that payment in full of Petitioner's primary mortgage note makes the Subordinate Note due and payable. (Sec'y Stat., ¶ 3.) The primary note was paid in full on or about March 17, 2006, thus triggering Petitioner's obligation to repay the Subordinate Note in full (Sec'y Stat., ¶ 4.)

HUD has attempted to collect on the Subordinate Note from Petitioner, but has been unsuccessful. (Sec'y Stat., ¶ 7.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$4,702.84 as the unpaid principal balance as of April 30, 2011;
- (b) \$15.68 as the unpaid interest on the principal balance at 1% per annum through April 30, 2011; and
- (c) interest on said principal balance from May 1, 2011 at 5% per annum until paid.

(Sec'y Stat., ¶ 7.) A Notice of Intent to Collect by Treasury Offset, dated March 28, 2011, was sent to Petitioner. (Sec'y Stat., ¶ 8.)

Discussion

31 U.S.C. §§ 3716 and 3720A authorize federal agencies to collect debts owed to the United States Government by means of administrative offset. The burden of proof is on the alleged debtor to show that the debt claimed by the Secretary is unenforceable or not past due. 24 C.F.R. § 17.152(b).

In Petitioner's Determination Review Request for HUD Claim N. 7-201168890A, Petitioner states that the alleged debt is not enforceable because HUD did not submit a claim to be paid after receiving notice of the bankruptcy proceedings. (Pet'r's Hr'g Req., filed April 14, 2011.) The Secretary argues that HUD received notice in both bankruptcy proceedings, but only as the insurer of Petitioner's primary mortgage. (Sec'y Stat., ¶ 12, 15.) The Secretary further argues that HUD was not required to submit a claim during either bankruptcy proceeding because the Subordinate Note did not become due or payable until March 17, 2006, one month after Petitioner's second bankruptcy proceeding was dismissed. (Sec'y Stat., ¶ 18.) In the alternative, the Secretary argues that Petitioner failed to submit proof to support Petitioner's claim that HUD failed to submit a claim during the pendency of the bankruptcy proceeding. (Sec'y Stat., ¶ 19.)

Petitioner offers no evidence to support his assertion that he does not owe the debt in this case, or that the debt is not past due or legally enforceable. Nowhere does Petitioner address the Secretary's arguments set forth in paragraphs 18-19 of the Secretary's Statement that HUD was not required to submit a claim or that Petitioner has not provided proof that HUD failed to submit a claim during the bankruptcy proceeding. Further, Petitioner's letter, dated May 16, 2011, does not contest the alleged debt but merely states that Petitioner is "unable to pay the full

amount at this time.” (Petitioner’s Letter (“Pet’r Ltr.”), dated May 16, 2011.) The second Chapter 13 bankruptcy proceeding filed by Petitioner was dismissed by the United States Bankruptcy Court on February 8, 2006, without discharging the debt Petitioner owed to HUD. *Id.*, attachments. Therefore, Petitioner’s debt to HUD, as evidenced by the Subordinate Note, and the documentary evidence filed by the Secretary is due and owing to the Department.

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner 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