

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

In the Matter of:

MALCOLM CLARK,

Petitioner

Judge H. Alexander Manuel

HUDOA No. 12-M-NY-PP11
Claim No. 7-210053050A
Date May 3, 2012

DECISION AND ORDER

Malcolm Clark ("Petitioner") was 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 Petitioner in satisfaction of a delinquent and legally enforceable debt allegedly owed by Petitioner to HUD.

On November 7, 2011, Petitioner requested a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD. The administrative judges of the Office of Hearings and Appeals have been designated to conduct a hearing to determine whether the alleged debt in this case 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 November 22, 2011. (Notice of Docketing, Order and Stay of Referral ("Notice"), dated November 22, 2011.)

Background

On or about May 15, 2006, the HUD-insured mortgage on Petitioner's home was in default. (Secretary's Statement ("Sec'y Stat.") ¶ 2, dated December 6, 2011.) In order to prevent foreclosure, HUD advanced funds to Petitioner's lender to bring the primary note current. (*Id.* at ¶ 3.) On May 15, 2006, in exchange for foreclosure relief, Petitioner executed a Subordinate Note ("Note") in favor of HUD in the amount of \$8,249.12 (*Id.* at 4.)

Paragraph 4(A)(1) of the Note provides that it becomes due and payable when "[b]orrower has paid in full all amounts due under the primary Note and related mortgage, deed of trust or similar Security Instruments insured by the Secretary. (Sec'y Stat. ¶ 5; Sec'y's Exhibit B.) On or about July 31, 2007, the Secretary was notified that the FHA insurance on Petitioner's primary note was terminated as the primary note had been paid in full. (Sec'y Stat. ¶ 6.) This event made the Note due and payable. Petitioner failed to make payment on the Note. (*Id.* at 8.) Thus, Petitioner's debt to HUD became delinquent. (*Id.*)

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

- (a) \$8,249.12 as the unpaid principal balance as of November 30, 2011;
- (b) \$1,319.52 as the unpaid interest on the principal balance at 4% per annum through November 30, 2011;
- (c) \$712.15 as the unpaid penalties and administrative costs through November 30, 2011; and
- (d) interest on said principal balance from December 1, 2011 at 4% per annum until paid.

(Sec'y Stat. ¶ 9; Dillon Decl. ¶ 5.) A Notice of Intent to Collect by Treasury Offset dated September 19, 2011 was sent to Petitioner. (Sec'y Stat. ¶ 9; Dillon Decl. ¶ 5.)

Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A, permits federal agencies to collect debts owed to them by seeking administrative offset of federal payments otherwise payable to delinquent borrowers. 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 7, 2011, this Court received a letter from Petitioner that acknowledged his indebtedness to the Secretary, but disputed the Secretary's right to collect upon the note at the present time. (Petitioner's Letter ("Pet'r's Letter"), received November 7, 2011.) Specifically, Petitioner stated, "[m]y only dispute is that, [sic] I am being asked to repay this loan at this time." (*Id.*) Petitioner filed no evidence along with his letter, but sought an opportunity to make payment arrangements with the Secretary.

On November 22, 2011, this Court ordered the Secretary to file documentary evidence to prove that Petitioner is indebted to HUD in the amount alleged, and that the debt is enforceable and past due. (Notice of Docketing, p. 2.) On January 4, 2012, this Court issued a second order directing the Secretary to file documentary evidence to prove that the alleged debt is legally enforceable against Petitioner. (Order, issued January 4, 2012.) On January 10, 2012, the Secretary complied with the Order dated January 4, 2012 and filed the Secretary's Statement, which was supported by a copy of the Note and a sworn declaration made by Brian Dillon. (Sec'y Stat., Attachs.)

After receiving the Secretary's documentary evidence, on March 1, 2012, this Office ordered Petitioner to file "documentary evidence to prove that all or part of the alleged debt in this case is not past due or legally enforceable." (Order ("March Order"), dated March 1, 2012.) The March Order required Petitioner to file his evidence "on or before March 23, 2012" and stated that "[f]ailure to comply with this Order may result in...the entry of judgment in favor of

the opposing party in this case, [or] a decision based on the documents of record.” (emphasis in original) (*Id.*)

Petitioner has failed to file any evidence to support his assertion that the debt is not collectible by the Secretary at this time. This Court has held that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.” *Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). As Petitioner has failed to file documentary evidence in compliance with the Orders of this Office, I find that Petitioner has failed to meet his burden of proving that he does not owe the debt in this case.

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, dated November 22, 2012, 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, to the extent authorized by law.



H. Alexander Manuel
Administrative Judge

May 3, 2012