



**Office of Appeals
U.S. Department of Housing and Urban Development
Washington, D.C. 20410-0001**

In the Matter of:

CELESTINE MILLS,

Petitioner

HUDOA No. 12-M-NY-PP14
Claim No. 7-21007470B

DECISION AND ORDER

Petitioner, Celestine Mills 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 to HUD.

On December 5, 2011, Petitioner filed her request for hearing concerning the existence, amount or enforceability of the debt allegedly owed to 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. § 17.170(b). The administrative judges of the Office of Appeals have been designated to conduct a hearing to determine whether the debt allegedly owed to HUD is legally enforceable. 24 C.F.R. §§ 17.152 and 17.153. After receiving Petitioner’s 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 8, 2011. (Notice of Docketing, Order and Stay of Referral (“Notice”), dated December 8, 2011.)

Background

On or before February 8, 1999, Petitioner defaulted on her mortgage note and was threatened with foreclosure. (Secretary’s Statement, ¶2; Declaration of Gary Sautter, Director, Asset Recovery Division, Financial Operations Center of the U.S. Department of Housing and Urban Development, (HUD) at ¶4, Exhibit B). HUD was the insurer of Petitioner’s home mortgage note. *Id.*

As a means of providing foreclosure relief, HUD advanced funds to the FHA-insured lender to bring the Petitioner’s mortgage current. (Sautter Decl. ¶4). In exchange for foreclosure

relief, on February 8, 1999, Petitioner executed a Subordinate Note ("Note") in the amount of \$5,634.00, in favor of the Secretary for the U.S. Department of Housing and Urban Development, (Sec'y Stat. ¶4, Exhibit B).

The Note, in ¶4(A), cited specific events that made the debt become immediately due and payable. One of those triggering events was when the Petitioner paid, in full, all amounts due under the primary note and related mortgage insured by the Secretary. (Sec'y Stat. 5; Note at ¶4(A)(i)). On or about August 25, 2003, the FHA insurance on Petitioner's primary note was terminated when the lender notified the Secretary that the note was paid in full. (Sec'y Stat. ¶6; Sautter Decl. at ¶4, Note at ¶¶4(A)(i) and (iii)).

Upon payment in full of the primary note, Petitioner was required to make payment to HUD on the Note at the "Office of Housing-FHA Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, S.W., Washington, DC 20410 or any such other place as Lender agrees in writing..." (Sec'y Stat. ¶ 7; Note at ¶4(B)).

Petitioner failed to make payments as agreed in the Note. HUD has attempted to collect on this debt, but Petitioner remains delinquent. (Sec'y Stat., ¶ 8.) The Secretary alleges Petitioner is justly indebted to HUD in the following amounts (Sec'y Stat. ¶9):

- (a) \$3,605.67 as the unpaid principal balance as of November 30, 2011;
- (b) \$65.30 as the unpaid interest on the principal balance at 4.0% per annum through November 30, 2011; and
- (c) interest on said principal balance from December 1, 2011, at 4.0% per annum until paid.

(Sautter Decl., ¶5.)

HUD sent A Notice of Intent to Collect by Treasury Offset, dated November 14, 2011, to Petitioner. (Sec'y Stat. 10; Dillon Decl., ¶6.)

In Petitioner's request for hearing, Petitioner does not deny the existence of the debt or challenge the legal enforceability of the debt. Rather, Petitioner alleges that she is unable to pay HUD's debt due to financial hardship. (Petitioner's letter, dated November 29, 2011). 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 filing 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).

The Secretary has met his burden of proof to come forward with documentary evidence in support of his claim against Petitioner for the debt owed to HUD.

Petitioner, on the other hand, has failed to come forward with documentary evidence to prove that she is not indebted to HUD in the amounts claimed by the Secretary. *See* Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated December 5, 2011. A second Order was issued on January 17, 2012, ordering Petitioner to file documentary evidence as initially sought in the Notice of Docketing. This Order stated that “[f]ailure to comply with this Order may result in a decision based on the documents in the record of this proceeding.” (emphasis in original). (*Id.*)

As of the date of this Decision and Order, Petitioner has yet to file any evidence to support her claim that she does not owe the debt to HUD. This Office has consistently held that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.” *In re Troy Williams*, HUDOA No. 09-M-CH-AWG52, (Jun. 23, 2009) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300, (Jul. 3, 1996)). Considering Petitioner’s failure to provide documentary evidence to support her claim, this Office, finds that Petitioner is liable for the full amount claimed by the Secretary.

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

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

March 29, 2012