

**UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF APPEALS
Washington, D.C. 20410-0001**

In the Matter of:

N. Renee Foxworthy,

Petitioner

HUDOA No. 12-M-NY-PP23
Claim No. 780734494-0

Dated: May 4, 2012

DECISION AND ORDER

N. Renee Foxworthy, a/k/a Nichole Foxworthy ("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 to HUD.

On February 6, 2012, Petitioner filed her 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 Petitioner's 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 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 February 7, 2012. (Notice of Docketing, Order and Stay of Referral ("Notice"), dated February 7, 2012.)

Background

On May 24, 2010, Petitioner executed and delivered a Note to Domestic Bank in the amount of \$20,769.00, 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 Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of the U.S. Department of Housing and Urban Development (HUD) at ¶3, Exh. C).

Petitioner failed to make payment on the Note as agreed. In accordance with 24 C.F.R. § 201.54, on April 20, 2011, Admirals Bank, f/k/a Domestic Bank 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. ¶3, Exh. B).

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

- (a) \$20,275.35 as the unpaid principal balance as of February 16, 2012;
- (b) \$584.44 as the unpaid interest on the principal balance at 1% per annum through February 16, 2012;
- (c) \$164.31 as unpaid penalties and administrative cost[s] through February 16, 2012; and
- (d) interest on said principal balance from February 17, 2012 at 1% per annum until paid.

(Sec'y Stat. ¶4; Dillon Decl. ¶4, Exh. C).

A Notice of Intent to Collect by Treasury Offset dated July 25, 2011 was sent to Petitioner. The Notice provided Petitioner 65 days to pay the debt in full or enter into a repayment agreement. The Notice also provided Petitioner 20 days in which to request a hearing. (Sec'y Stat. ¶5; Dillon Decl. ¶5. *See also* 24 C.F.R. § 17.69 (2012)). The Notice of Intent warned Petitioner that failure to request a hearing by September 28, 2011, would result in the referral of her debt to the U.S. Department of Treasury ("Treasury") for inclusion in Treasury's Offset Program. (Sec'y Stat. ¶6). Petitioner failed to request a hearing or enter into a repayment plan, therefore, on October 3, 2011, Petitioner's account was referred to the Treasury Offset Program. (Sec'y Stat. ¶7; Dillon Decl. ¶5).

The Petitioner does not dispute the validity or legal enforceability of this debt. Rather, Petitioner requested to enter into a voluntary repayment agreement of \$50.00 per month. Petitioner's proposal was unacceptable to HUD. (Sec. Stat. ¶9; Dillon Decl. ¶6).

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 February 6, 2012, this Office received a letter from Petitioner that was deemed to be a Request for Hearing. (Pet'r's Hr'g Req.). In her letter, Petitioner states:

"Request for a written repayment agreement due to reduction in force (RIF) from the State of North Carolina. Currently, I hold a part-time position. The pay from this job provides, i.e. food,

housing, insurance, and transportation. I am also seeking full-time employment to pay this debt; however, I currently have none.”

(Pet'r's Hr'g Req.).

On March 22, 2012, this Office ordered Petitioner to file, on or before April 18, 2012, documentary evidence proving that all or part of the alleged debt in this case is not past due or not legally enforceable against Petitioner. (Order for Documentary Evidence, dated March 22, 2012.) 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). Petitioner has failed to file any such evidence and has, therefore, failed to comply with the Order issued by this Office.

Petitioner has, therefore, not proven that the debt in this case is not past due or legally enforceable. In the absence of documentary evidence to support Petitioner's position, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner 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 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 4, 2012