

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

In the Matter of:

**Vicki Arnold,**

Petitioner.

19-AM-0090-AO-033

7-210139690A

January 13, 2022

**DECISION AND ORDER**

This proceeding is before the Office of Hearings and Appeals upon a request for hearing filed by Vickie Arnold (“Petitioner”) concerning the existence, amount, or enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”).

The Debt Collection Improvement Act of 1996 authorizes federal agencies to use administrative offset as a mechanism for the collection of debts owed to the United States government. *See* 31 U.S.C. §§ 3716, 3720A. The HUD Office of Hearing 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 this Court, in accordance with the procedures set forth in 24 C.F.R. §§ 17.69 and 17.73, have been designated to conduct a hearing to determine, by a preponderance of the evidence, whether the alleged debt is past due and legally enforceable.

**PROCEDURAL BACKGROUND**

Petitioner’s hearing request, received March 27, 2019, and referred to hereinafter as *Petitioner’s Statement* (“*Petr’s. Stat.*”), included argument and documentary evidence in support of her position. Pursuant to 24 C.F.R. § 17.77, on April 1, 2019, this Court stayed the issuance of an administrative offset order until the issuance of this written decision. (*See Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”) at 2). The Court also provided an opportunity for Petitioner to file additional documentary evidence, (*see id.*), but Petitioner did not submit any further filings. On October 18, 2019, the Secretary filed a *Statement that Petitioner’s Debt Is Past Due and Legally Enforceable* (“*Sec’y. Stat.*”), along with documentary evidence in support of his position.

**FINDINGS OF FACT**

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3716, arising out of a defaulted loan that was insured against non-payment by HUD’s Federal Housing Administration (“FHA”).

In 2013, Petitioner requested and received modification of the FHA-insured primary mortgage on her home after encountering difficulty making the required payments. (*See Petr. 's Stat.*, Jan. 23, 2019 Letter from Petitioner to HUD; *Petr. 's Stat.*, Oct. 23, 2013 Loan Modification Agreement). As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's primary lender, Guild Mortgage Company ("Guild"). (*Sec'y Stat.*, ¶ 3; *Sec'y Stat.*, Ex. 2, Declaration of Brian Dillon ("*Dillon Decl.*"), ¶ 4). In exchange for such funds, on October 23, 2013, Petitioner executed and delivered a Subordinate Note ("Note") in the Secretary's favor promising to repay HUD for a loan in the amount of \$14,463.81. (*Sec'y Stat.*, ¶ 2; *Sec'y Stat.*, Ex. 1, Note; *see also Petr. 's Stat.*, Oct. 23, 2013 Subordinate Deed of Trust).

Paragraph 4(A) of the Note cites specific events that make the debt become due and payable. One of those events is the payment in full of the primary note. (Note, ¶ 4(A)(i)). Petitioner sold her home in April 2018. (*See Petr. 's Stat.* (containing three letters from Petitioner to HUD explaining sale of home)). Subsequently, on or about May 10, 2018, the FHA insurance on Petitioner's primary note was terminated when the primary lender notified the Secretary that the primary note had been paid in full. (*Sec'y Stat.*, ¶ 5; *Dillon Decl.*, ¶ 4). Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the "Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410 or any such other place as [HUD] may designate in writing by notice to Borrower." (Note, ¶ 4(B)).

Petitioner failed to make payment on the Note at the place and in the amount specified above. Consequently, the Secretary alleges that Petitioner's debt to HUD is delinquent. (*See Sec'y. Stat.*, ¶ 6; *Dillon Decl.*, ¶ 5). The Secretary has made efforts to collect this debt from Petitioner by sending a Notice of Intent to Collect by Treasury Offset dated October 15, 2018 to Petitioner's last known address. (*Sec'y. Stat.*, ¶ 8; *Dillon Decl.*, ¶ 6; *see also Petr. 's Stat.*, Oct. 15, 2018 Notice of Intent to Collect by Treasury Offset). However, there is still no evidence Petitioner has paid off the Note. (*See Sec'y. Stat.*, ¶ 9). Therefore, the Secretary asserts that Petitioner is indebted to HUD in the following amounts:

- a) \$14,463.81 as the unpaid principal balance as of September 30, 2019;
- b) \$156.66 as the unpaid interest on the principal balance at 1% per annum through September 30, 2019;
- c) \$906.05 as the unpaid penalties and administrative costs through September 30, 2019; and
- d) interest on said principal balance from October 1, 2019 at 1% per annum until paid.

(*Sec'y. Stat.*, ¶ 7; *Dillon Decl.*, ¶ 5).

## **DISCUSSION**

The statutes at 31 U.S.C. § 3716 and § 3720A provide federal agencies with administrative offset of federal payments as a remedy for the collection of debts owed to the United States government. The Secretary bears the initial burden of proof to show the existence

and amount of the alleged debt. Pursuant to 24 C.F.R. § 17.69(b)-(c), Petitioner must show by a preponderance of the evidence that all or part of the alleged debt is either not past due or not legally enforceable.

As evidence of Petitioners' indebtedness, the Secretary has filed the *Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable* (see *Sec'y. Stat.*); a sworn declaration by Brian Dillon, Director of the Asset Recovery Division for the HUD Financial Operations Center (see *Sec'y Stat.*, Ex. 2); and a copy of the Note (see *Sec'y. Stat.*, Ex. 1). As explained in the Secretary's position statement and in Mr. Dillon's declaration, the Note evidences Petitioner's promise to repay a \$14,463.81 loan given by HUD as a means of relieving Petitioner from the threat of foreclosure on her HUD-insured mortgage. Accordingly, the Court finds that the Secretary has established the existence of a debt.

"A petitioner has the burden of producing evidence which demonstrates that the claimed debt is not past-due or legally enforceable." See *Michael Cook*, HUDBCA No. 87- 2782-H307 (Aug. 11, 1988). In the case at bar, Petitioner claims she should not be held responsible for the subject debt because (1) "[w]hen contacting Guild Mortgage for the payoff on the loan they failed to inform/remind [Petitioner] that there was a loan modification that needed to be paid off. The buyer paid off the loan according to what Guild Mortgage requested and they released the lien;" (2) HUD failed to notify Petitioner of the debt in a timely manner, or to acknowledge or respond to her request for a waiver of collection efforts; and (3) repayment of the debt will pose a financial hardship on Petitioner. (*Petr. 's Stat.*, Letters from Petitioner to HUD dated Feb. 26, 2019; Jan. 23, 2019; and Oct. 11, 2018).

Petitioner has introduced, as support for her position, copies of the Loan Modification Agreement and Subordinate Deed of Trust she executed on October 23, 2013, when her primary mortgage was modified and she received the subordinate loan from HUD; a Payoff Demand Statement from Guild dated May 3, 2018, providing the payoff amount for Petitioner's primary mortgage; a Release of Lien executed by Guild's nominee on May 18, 2018, releasing Petitioner from liability for the primary mortgage after the underlying property was sold and the mortgage was paid off; the Notice of Intent to Collect by Treasury Offset that was sent to Petitioner on October 15, 2018; letters Petitioner submitted to HUD on October 11, 2018, January 23, 2019, and February 26, 2019 explaining her position and asking HUD to waive collection of the debt; a Debt Resolution Program Financial Statement that Petitioner submitted to HUD in February 2019; and proof of Petitioner's social security income as of December 2018. (See *Petr. 's Stat.*).

Petitioner's claim that she was neither informed by Guild nor reminded by HUD that she needed to pay off her subordinate loan is insufficient evidence to establish that the Note is not past due or is unenforceable against Petitioner. See *Nancy Brignoni*, HUDOA No. 10-H-NY-AWG11 (April 26, 2011). Petitioner contends that Guild included only the primary mortgage in the payoff amount and did not remind her to account for the subordinate loan when she was in the process of selling her home. This may be true, but the Secretary's right to collect the alleged debt in this case emanates from the terms of the Note, not from the representations made by the mortgage company or primary lender. See *Bruce R. Smith*, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007).

Likewise, it was not HUD's responsibility to remind Petitioner of the terms of her subordinate loan agreement. In a letter sent to HUD in October 2018 requesting debt forgiveness,

Petitioner acknowledged this, stating, “I realize that this [debt] is due to the conditions in my loan modification agreement. Regretfully, because this modification was done so long ago, I did not remember that I would receive a penalty<sup>[1]</sup> upon the sale of the home.” (*Petr. ’s Stat.*, Oct. 11, 2018 Letter from Petitioner to HUD). Petitioner additionally stated: “I recognize that I signed a document that notifies me of this penalty, and I take responsibility for that.” (*Id.*).

Petitioner asserts that she would have been able to pay off the subordinate loan if HUD had provided notice of the debt immediately after she sold her home in April 2018, instead of sending a notice of intent to collect in October 2018. (*Id.*) However, as the person who executed the Note several years earlier in exchange for a government loan, Petitioner was responsible for being aware of its terms and conditions relating to repayment.

The terms of the Note signed by Petitioner in exchange for a subordinate mortgage with HUD clearly state, under the heading “Borrower’s Promise to Pay,” that “[i]n return for a loan received from Lender, Borrower promises to pay the principal sum of ... \$14,463.81.” (*Sec’y. Stat.*, Ex. 1, Note, ¶ 2 (emphasis added)). “Lender” is defined under the heading “Parties” as “the Secretary of Housing and Urban Development,” while “Borrower” is identified as the person signing the Note, i.e., Petitioner. (*See id.*, ¶ 1). Under the heading “Manner of Payment,” subheading “Time,” the Note further states that payment on the Note is due upon the payment in full of the primary note. (*See id.*, ¶ 4(A)(i)). Because Petitioner agreed to pay the subject debt in accordance with the terms of the Note, the onus falls on Petitioner, not on the primary lender or HUD, to ensure that the subject debt was satisfied.

For Petitioner not to be held liable for the full amount of the debt, Petitioner must produce either a release in writing explicitly relieving her obligation under the terms of the Note or produce “valuable consideration accepted by the lender” that indicates HUD’s intent to release. *See Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). Petitioner has failed to produce either in this case. The evidence submitted by Petitioner merely demonstrates that she entered into a Loan Modification Agreement with her primary lender in 2013 and executed a Subordinate Deed of Trust in favor of HUD; that Guild informed her of the payoff amount for the primary mortgage in 2018; and that Guild released her from liability for the primary mortgage shortly thereafter.

Although Petitioner alleges an inability to pay the debt because of financial hardship due to being widowed, unemployed, on social security, and disabled, this Court’s role is limited to determining whether, as a matter of law, the subject debt is past due and legally enforceable against Petitioner. *See* 24 C.F.R. § 17.69(c). Unfortunately, evidence of hardship, no matter how compelling, cannot be taken into consideration by this Court in determining whether a debt is legally enforceable through administrative offset. *See Frank and Jessie Collins*, HUDBCA No. 02-C-CH-CC053 (March 19, 2003), *citing Anna Filiziana*, HUDBCA No. 95-A-NY-T11 (May 21, 1996).

Petitioner also asserts that, although she requested a waiver from HUD in October 2018 and apparently submitted a financial statement in early 2019, she never received any response to

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<sup>1</sup> Petitioner refers to the debt as a “prepayment penalty” and references the primary lender’s obligation to disclose prepayment penalties when providing a payoff amount. However, Petitioner’s debt is not a prepayment penalty. A prepayment penalty is a charge added to the primary mortgage by the lender if the borrower pays off the primary loan too quickly, whereas Petitioner’s debt arises from a separate subordinate loan given by HUD.

the waiver request. However, this Court is not authorized to compromise, or waive collection of, a legally enforceable debt. *See* 31 U.S.C. § 3711(a)(2)-(3) (vesting these powers in the HUD Secretary, not the hearing official); 24 C.F.R. § 17.69(c) (limiting the hearing official's jurisdiction to a review of the past-due status and legal enforceability of debt); *see also Edgar Joyner Sr.*, HUDBCA No. 04-A-CHEE052 (June 15, 2005) (making clear that a hearing official is not authorized to propose or accept any settlement on behalf of HUD). If Petitioner wishes to address repayment terms or an agreed payment plan with the Department, Petitioner should contact Michael DeMarco, Director of the HUD Financial Operations Center, at 1-800-669-5152, extension 2859, or she may write to the HUD Financial Operations Center at 50 Corporate Circle, Albany, NY 12203-5121.

**ORDER**

Based on the foregoing, 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 seek collection of this outstanding obligation by means of administrative offset in the amount so claimed by the Secretary.

**SO ORDERED,**



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H. ALEXANDER MANUEL  
Administrative Judge

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**Review of determination by hearing officers.** A motion for reconsideration of this Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.