

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

In the Matter of:

Dior Arnpriester,

Respondent.

20-AM-0068-AO-015

7-210150850A

March 23, 2023

DECISION, RULING, AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a request for hearing filed by Dior Arnpriester (“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. 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). Thereafter, 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.

PROCEDURAL BACKGROUND

On or about January 9, 2020, Petitioner filed the *Request for Hearing* in this case. Pursuant to 24 C.F.R. § 17.77, this Court initially stayed the issuance of an administrative offset order until the issuance of this written decision. (*See Notice of Docketing, Order and Stay of Referral*, dated January 10, 2020 (“*Notice of Docketing*”) at 2. On or about February 11, 2020, Petitioner filed the *Petitioner’s Initial Set of Documents in Support of Request for Removal/Reduction of Alleged Debt*, (“*Pet. Resp-1*”), which included HUD’s Notice of Intent to Collect by Treasury Offset with attached copies of the Subordinate Note at issue in this case; and separately, Petitioner’s correspondence with her primary lender, Bank of America. On or about December 18, 2020, the Secretary filed *the Secretary’s Statement that Petitioner’s Debt Is Past Due and Legally Enforceable* (“*Sec’y. Stat.*”), along with documentary evidence in support of the Secretary’s position, including the Subordinate Note at issue in this case, (**Exhibit 1**); *Declaration of Gary Sautter*, Acting Director of the Asset Recovery Division of HUD’s Financial Operations Center

(**Exhibit 2**); and HUD letter to Petitioner, dated October 1, 2020 transmitting records from HUD’s file concerning the debt at issue in this case. On January 6, 2021, Petitioner filed the *Petitioner’s Initial Response to Secretary’s Statement and Renewed Request for Subpoena for Documents From Bank of America* (“*Pet. Resp-2*”). Petitioner argued that his request for subpoena was based on his need to prove that his primary lender, Bank of America, was acting as an agent on behalf of the U.S. Department of Housing and Urban Development in connection with the alleged debt at issue in this case. As a preliminary matter, and based on the documentary evidence filed by the Secretary in the *Secretary’s Statement; Sautter Declaration*, Exhibit 2, the Court finds that Petitioner’s request for subpoena is not reasonably calculated to lead to the discovery of admissible evidence. Therefore, Petitioner’s request for subpoena is DENIED. On April 6, 2022, this Court issued an *Order for Documentary Evidence* ordering Petitioner to file documentary evidence to prove that he is not indebted to HUD in the amounts claimed by the Secretary. That *Order* stated that “Failure to comply with this Order may result in judgment being entered in favor of the opposing party or such other sanctions deemed necessary and proper by the Court in accordance with 26 CFR §26.4. (emphasis in original). Petitioner failed to comply with that *Order*. Nevertheless, this case will proceed based on the evidence of record. This *Decision, Ruling, and Order* follows.

DISCUSSION

Petitioner, Dior Arnpriester executed and delivered to the Secretary a *Subordinate Note* (the “*Note*”), dated October 8, 2015, in the principal amount of \$57,983.70. *Sec’y. Stat.*, Exhibit 1.

This Note was incurred for the purpose of providing foreclosure relief to Petitioner when he was in arrears on his primary mortgage with his lender, Bank of America (“BofA”). HUD advanced funds to Petitioner’s FHA-insured primary mortgage lender, B of A, and Petitioner executed the Note in favor of the Secretary. See ¶ 4 of the *Declaration of Gary Sautter*, Acting Director of the Asset Recovery Division of HUD’s Financial Operations Center (“FOC”), *Sec’y. Stat.*, Exhibit 2 (“*Sautter Decl.*”).

Under the terms of the Note, the amount to be repaid thereunder becomes due and payable:

“[o]n October 1, 2045 or, if earlier, when the first of the following events occurs: (i) borrower has paid in full all amounts due under the primary note and related mortgage, deed of trust or similar security instrument insured by the Secretary; or (ii) the maturity date of the primary note has been accelerated; or (iii) the note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary; or (iv) the property is not occupied by the purchaser as his or her principle residence.”

Note, ¶ 4(A).

On or about January 15, 2019, the Petitioner’s primary mortgage was paid in full and the FHA mortgage insurance was terminated, an event that caused the Note to become due. Note, ¶ 4; *Sautter*

Decl., ¶ 4. Thereafter, HUD attempted to collect the amounts due under the Note, however, Petitioner remains indebted to HUD. *Sautter Decl.*, ¶¶ 5-6.

A Notice of Intent to Collect by Treasury Offset, dated June 24, 2019, was mailed to Petitioner's last-known address. *Sautter Decl.*, ¶ 6. HUD maintains that the Financial Operations Center mailed a copy of Petitioner's financial file to Petitioner on August 28, 2019. *Sautter Decl.*, ¶ 7. HUD maintains that it is not in possession of any correspondence between Petitioner and B of A. *Id.* HUD has declared under oath that the Financial Operations Center provided Petitioner a copy of its records regarding the debt in this case. *Id.* See HUD letter to Petitioner, dated October 1, 2020, attached as Exhibit 3 to the *Sec'y. Stat.*

The Secretary maintains that Petitioner is indebted to the Secretary in the following amounts:

- a. \$57,983.70 as the unpaid principal balance as of November 30, 2020;
- b. \$917.70 as the unpaid interest on the principal balance at 1.0% per annum through November 30, 2020;
- c. \$7,283.67 as the unpaid penalties and administrative costs as of November 30, 2020; and
- d. interest on said principal balance from December 1, 2020, at 1.0% per annum until paid.

Sautter Decl., ¶ 5.

Pursuant to 31 U.S.C. § 37173, and 31 C.F.R. 901.94, HUD is required to charge interest and penalties toward debts owed. After Petitioner's primary mortgage was paid in full, the Note immediately became due and payable. The principal amount has since accrued additional interest and penalties in the amounts stated above.

Petitioner was threatened with foreclosure and HUD advanced funds to Petitioner's lender to prevent foreclosure in accordance with 24 C.F.R. § 203.371(b). One of the conditions for this payment or advancement of funds is the execution of a Subordinate Mortgage which the lender, by regulation must facilitate. See 24 C.F.R. § 203.371(c).

Petitioner does not deny signing the Note in favor of the Secretary. The amount claimed by HUD is in accordance with the Note. Note, ¶ 8; *Pet. Resp-2*. The Note is a separate and distinct debt from the primary mortgage. The Note states in unambiguous terms when the amount to be repaid becomes payable, and HUD's right to collect emanates from the terms of the Note. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). Mitchell and Rosalva Fraijo, HUDBCA No. 99-C-CH-Y200 (March 20, 2000).

Petitioner has not provided any facts supported by documentary evidence that controvert the existence, amount and validity of the debt claimed by HUD. Petitioner has also failed to provide documentation which demonstrates that HUD's Note was repaid in full upon payoff of his primary mortgage or at any time thereafter. Finally, Petitioner has failed to produce evidence that he was released by HUD from his obligations pursuant to the Note. Although Petitioner claims that B of A remains liable to him for errors that it is alleged to have

committed, Petitioner is unable to provide proof that that liability, if any, is somehow attributable to Petitioner's liability to HUD in this case. The Secretary has unequivocally denied that HUD ever authorized B of A to act on HUD's behalf with respect to the Note. *Sautter Decl.*, ¶ 14. The Secretary also states that the outcome of its audit of this debt demonstrates that "[t]here was no ending cumulative unapplied balance on this case and therefore no refund is due [Petitioner]." *Sautter Decl.*, ¶¶ 13-14.

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). This Court has long held that a petitioner's incorrect and/or unsupported beliefs are insufficient to meet that burden. Nancy Brignoni, HUDOA No. 10-H-NY-AWG11, April 26, 2011. See, Judith Herrera, HUDOA No. 12-M-CH-AWG27 (July 12, 2012). "Assertions without evidence are not sufficient to show that a debt claimed by the Secretary is not past due or unenforceable." Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009); 31 C.F.R. 285.11(f)(8)(ii); Sara Hedden, HUDOA No. 09-H-NY-AWG95 (July 8, 2009); Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996). In this case, Petitioner's claims that he does not owe the full amount of the debt are unsupported and insufficient.

Significantly, Bank of America has no authority to forgive or release any of HUD's claims. *Sautter Decl.*, ¶ 14. In order for Petitioner to prevail in this case, there must be a release, in writing, from the lender—in this case HUD—specifically discharging Petitioner's obligation, for valuable consideration accepted by the lender from Petitioner, which would indicate intent to release. Franklin Harper, HUDBCA No. 04-D-CH-AWG41 (March 23, 2005); Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003); Cecil F. & Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); Jesus E. & Rita de los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986). In this case, Petitioner has not provided any evidence of a valid release of his obligation by HUD. Petitioner's claims are unsupported, without merit and insufficient to refute the evidence that the Note is past due and legally enforceable against him. Accordingly, it

ORDERED, that the Secretary is authorized to collect the full amount claimed by administrative offset in this case, and it is

FURTHER ORDERED, the Stay of Referral of this matter to the U.S. Department of the Treasury issued on January 10, 2020, is hereby VACATED.

SO ORDERED,



H. Alexander Manuel
Administrative Judge

APPEAL NOTICE: You have the right to move for reconsideration of this case before the HUD Office of Hearings and Appeals within 20 days of the date of this ruling or decision; or, thereafter, to reopen this case. Ordinarily, such motions will not be granted absent a demonstration by the movant that there is substantial new evidence to be presented that could not have been presented previously. An appeal may also be taken of this decision to the appropriate United States District Court. For wage garnishments cases, See 24 C.F.R. § 17.81, 31 C.F.R. § 285.119f), and 5 U.S.C. 701, et seq. For administrative offset cases, See 24 C.F.R. § 17.73(a), and 5 U.S.C. § 701, et seq.