

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

In the Matter of:

CHARLES K. HICKS,

Petitioners

21-AM-0075-AO-013

Claim No. 721017062

August 15, 2023

DECISION AND ORDER

On or about February 23, 2021, Charles K. Hicks, (“Petitioner”) filed a *Request for Hearing* concerning the amount, enforceability, or payment schedule 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, as amended (31 U.S.C. §§ 3716, 3720A), authorizes federal agencies to use administrative offset as a mechanism for the collection of debts allegedly owed to the United States government.

The Secretary of HUD has designated the administrative judges of the Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative offset. This hearing is conducted in accordance with procedures set forth at 24 C.F.R. §17.61, *et seq.*, as authorized by 24 C.F.R. §§ 17.69 and 17.73. 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.

BACKGROUND

On or about November 21, 2016, Petitioner and his former wife executed a Subordinate Note (“Note”) for the principal amount of \$38,800.36 for the purpose of providing foreclosure relief on Petitioner’s primary mortgage with his lender. (*See Secretary’s Statement*, (“Sec’y Stat.”), ¶ 3; Exh 1, Note). The Note was executed in favor of the Secretary of HUD in consideration of the \$38,800.36 in funds advanced to Petitioner’s FHA-insured primary mortgage lender. *See Declaration of Brian Dillon*, (“*Dillon Decl.*”), Director of the Asset Recovery Division of HUD’s Financial Operations Center, *Sec’y Stat.*, Exh. 2, ¶ 4. Under the terms of the Note, Petitioner was to pay the principal amount of the unpaid balance on the Note until it was paid in full. (*See Exh. 1, Note*).

On or about December 30, 2019, Petitioner’s primary mortgage was paid in full and the FHA mortgage insurance was terminated by the lender. This event triggered the terms of

Paragraph 4(A) of the Note which required the Note to be paid in full when Petitioner “paid in full all amounts due under the primary note . . . insured by the Secretary . . .” *Dillon Decl.*, ¶ 4).

Thereafter, HUD attempted to collect the amounts owed by Petitioner, but Petitioner failed to pay. (*See Sec’y Stat.*, ¶ 5; Exh. 2, *Dillon Decl.*, ¶ 5). As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$38,800.36 as the unpaid principal balance as of June 30, 2023;
- b) \$2,134.44 as the unpaid interest on the principal balance at 2% through June 30, 2023;
- c) \$7,659.68 in penalties and administrative fees through June 30, 2023; and
- d) interest on said principal balance at 2% per annum until paid.

(*Sec’y Stat.*, ¶ 7; Exh. 2, *Dillon Decl.*, ¶ 5).

On or about December 14, 2020, a Notice of Intent to Initiate Administrative Offset Proceedings (“Notice”) was mailed to Petitioner. (*See Sec’y Stat.*, Exh. 2, *Dillon Decl.*, ¶ 6).

DISCUSSION

As evidence of the Petitioner’s indebtedness, the Secretary has filed the *Secretary’s Statement* together with a copy of the Note (Exh. 1, Note) and the sworn *Declaration of Brian Dillon*, Director, Asset Recovery Division of HUD’s Financial Operations Center (Exh. 2, *Dillon Decl.*). Accordingly, this Court finds that the Secretary has met her initial burden of proof.

In his *Request for Hearing*, Petitioner claims that the alleged debt is not enforceable against him on the grounds that his former wife, who also signed the Note, was to make the payments pursuant to a divorce agreement. (*See Request for Hearing*). Apart from this allegation, Petitioner does not provide any documentary evidence that the alleged debt is not past due or that it is unenforceable.

In response to Petitioner’s *Request for Hearing*, the Secretary produced the *Secretary’s Statement*, arguing that the terms of Petitioner’s divorce with his former wife are not binding on HUD and that Petitioner has produced no evidence to demonstrate that he is not indebted to the Department. Our jurisprudence has long-held that Petitioner and his former wife, as co-signers on the Note, are jointly and severally liable for the repayment of the entire debt, and that HUD has not released Petitioner from liability for the debt. *In re: Tony Oxford*, 21-AM-0168-AG-089 (July 9, 2022). In these cases, the Court often points out that Petitioner may wish to seek the assistance of counsel, separate and apart from this proceeding, in order to consider an indemnification action in the state or local courts against his former wife in order to enforce the divorce agreement. *Id.*

Petitioner also provides a copy of a Payoff Letter from Chase Bank, dated October 28, 2019, showing that he repaid his primary mortgage in full. *Request for Hearing*. The Secretary

maintains that “nothing in the Payoff Letter indicates that any funds were paid to HUD as repayment of the balance owed pursuant to the Note.” Sec’y Stat. ¶ 8. The Court agrees. Nothing in the Payoff Letter or any other document provided by Petitioner demonstrates that Petitioner repaid any portion of the amounts owed pursuant to the Note.

Petitioner has not produced documentary evidence that the debt in this case has been repaid, or that the debt is not due and enforceable by the Secretary. Petitioner has also not provided any documentary evidence that he relied upon written statements made by HUD officials that his debt was satisfied and/or that the terms of his divorce agreement with his former wife were binding on HUD in this case. Petitioner’s unsupported assertion that his former wife is responsible for the debt, or a portion of the debt, is insufficient evidence to establish that HUD may not enforce the Note against him. (*See Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003); *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009)). Moreover, Petitioner has not proven that he has repaid the Note in full.

Petitioner has also not provided evidence of any release from HUD of his obligation to repay the Note. (*See Sec’y Stat.*, ¶ 8). For the debt to be extinguished, HUD must provide a written release that specifically discharges the debtor’s obligation, for valuable consideration accepted by the lender from the debtor, which would indicate intent to release. (*See 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)). Petitioner has provided no evidence that he received a written release from HUD, and HUD maintains that it never issued or authorized the issuance of any instrument or document to cancel, satisfy or release HUD’s Note. (*See Sec’y Stat.*, ¶ 8).

The assertion that Petitioner is not responsible for the debt when HUD has not released him is unreasonable, unjust, and entirely without merit. Petitioner provides no legal authority or language in the Note that suggests that HUD is bound by his divorce agreement. HUD, as a third-party creditor, is not bound by a settlement, divorce decree, or other debt transfer agreement between parties when HUD is not a party to the instrument or arrangement. (*See Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003) (citing *Wendy Kath*, HUDBCA No. 89-4518-L8, at 2)). Therefore, I find that, because HUD did not agree to this transfer of its debt obligation between Petitioner and his former wife, HUD’s interest is unaffected and Petitioner remains indebted to HUD, notwithstanding his divorce agreement.

Petitioner has failed to submit any documentary evidence to prove that he is not indebted to HUD. I therefore find that Petitioner is indebted to HUD in the amounts 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. It is

ORDERED that the Order imposing the *Stay of Referral* of this matter to the U.S. Department of the Treasury for administrative offset is **VACATED**. The Secretary is authorized to seek administrative offset in the full amounts as determined determined by the Secretary, and as authorized by law.

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.