

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

In the Matter of:

Bradley and Bambi Wortham

Petitioners,

21-AM-0142-AO-020

7-210176540A

June 1, 2023

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a request for hearing filed by Bradley Wortham and Bambi Wortham (“Petitioners”) 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 April 29, 2021, Petitioners 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 May 12, 2021 (“*Notice of Docketing*”) at 2. On or about March 15, 2021, the Department filed HUD’s Notice of Intent to Collect by Treasury Offset with attached copies of the Subordinate Note at issue in this case. *Secretary’s Statement* (“*Sec’y. Stat.*”); Exhibit B - *Declaration of Larry Gagliardi*, (“*Gagliardi Decl.*”), Acting Director, Asset Recovery Division, HUD Financial Operations Center. On or about July 22, 2021, the Secretary filed the *Sec’y. Stat.*, along with documentary evidence in support of the Secretary’s position. On or about June 14, 2021, Petitioners filed *Petitioners’ Documentary Evidence*, (“*Pet. Docevid.*”) pertaining to their application for a FHA-Hamp program loan that Petitioners allege offers proof that they are not indebted to the Department in this case.

DISCUSSION

The Secretary maintains that Petitioners are indebted to the Department under the terms of that certain Promissory Note, dated February 1, 2017 (“the Note”). The Note contains Petitioner’s signature. *See Sec’y Stat*, ¶¶ 2-3; Exhibit B – *Gagliardi Decl*, ¶ 4; Exhibit A – the Note. The Department states that the proceeds of the Note in the amount of \$18,864.14 were used to advance funds to provide foreclosure relief to Petitioners, Bambie and Bradley Wortham to prevent their home from going into foreclosure proceedings when they fell behind on the loan payments with their primary lender. *Id*, ¶ 4-5.

The Secretary avers that the Department has met all requirements for seeking Treasury Offset in this case, and that Petitioners are indebted to the Department in the following amounts:

- (a) \$18,864.14, as the unpaid principal balance as of June 30, 2021;
- (b) \$78.55, as the unpaid interest on the principal balance at 1% per annum through June 30, 2021;
- (c) \$1,187.90, as the unpaid penalties and administrative costs as of June 30, 2021; and
- (d) interest on said principal balance from July 1, 2021 at 1% per annum until paid.

Gagliardi Decl., ¶ 5. The Secretary further provides that she has provided proper regulatory notice to Petitioner of the Notice of Intent to Collect by Treasury Offset in this case. *Id*, ¶ 6. The Secretary further certifies that the Department paid the complete insurance claim relating to the Note on February 19, 2020, pursuant to the applicable FHA insurance provisions. *Id*, ¶ 4. The Secretary has therefore met its initial burden to prove that Petitioner is indebted to the Department in the amounts claimed by the Secretary.

For Petitioners’ part, they deny that they are indebted on the Note. But they also do not deny that they have failed to repay their loan to HUD. Instead, Petitioner’s claim that they should not be required to repay the Note because HUD failed to:

- 1. Meet the “seasoning requirement” of 36 C.F.R. 38.4815(a)(4) for 12 monthly payments on the existing loan with Homebridge Financial Services before modifying the loan under the FHA/HAMP program;
- 2. Accurately report the date of Hurricane Harvey as a natural disaster that caused delayed loan payments; and
- 3. Record the related deed of trust in a timely manner.

Pet. Docevid, Neighborhood Watch, FHA Case Printout, at 5-122.

Petitioners have filed numerous documents in support of their allegations that Homebridge Financial Services filed a lien against their property several months after Petitioners executed the Note, and that various alleged administrative errors amounted to “fraud” on the part of Homebridge Financial Services that are somehow attributable to HUD. *Id*. Petitioners claim that they were not timely notified of the placement of the lien, and that Homebridge officials failed to respond to their requests for information concerning the FHA-HAMP loan. Although Petitioners make numerous factual allegations alleging improper handling of their FHA-HAMP

loan with Homebridge, Petitioners fail to provide any appreciable proof that Homebridge was acting on behalf of HUD, or that HUD has any legal liability for actions that may or may not have been taken by Homebridge.

The Secretary has addressed each of Petitioners' allegations and arguments in detail. The Secretary correctly observes that Petitioners do not dispute that they signed the Note, or that they received the benefit of the funds that HUD paid to their lender to prevent the lender from foreclosing on their home. Further, Petitioners' liability under the Note exists entirely separate and apart from any liability that Homebridge may or may not have to Petitioners. *Sec'y. Stat.* ¶¶ 11-16. The documentary evidence provided by both parties does not establish that HUD "held itself out" as a principal on whose behalf Homebridge Financial Services became authorized to act.

FHA-insured lenders are regulated by HUD and must act in accordance with HUD's program requirements. When a borrower goes into default on an FHA insured mortgage, HUD permits the lender to submit a Partial Payment of Claim to prevent foreclosure provided all conditions are met. See 24 C.F.R. § 203.371(b)... One of those conditions is the execution of a subordinate note and subordinate mortgage by the borrower in favor of HUD, which the lender must facilitate. *Id.* at § 203.371(c). While HUD regulations require the mortgagee to facilitate the borrower's execution of the subordinate note and subordinate mortgage, unless HUD explicitly requests that a lender service the indebtedness, no FHA-insured lender has blanket authority to service HUD-held debt and/or issue a mortgage satisfaction extinguishing HUD's indebtedness without HUD's express consent. Petitioners cite no statute, regulation or legal basis that causes the Subordinate Note to be rendered unenforceable.

Nowhere in the HUD regulations does the language create an express or implied relationship of agency and principal between HUD and individual lenders. The Secretary also demonstrates, as a matter of law, that Petitioners cannot establish an agency relationship under these facts. The Court agrees with the Secretary's analysis. With respect to Petitioner's unsupported claims that the Department is not entitled to seek recovery for interest, penalties, and other fees on just debts owed the U.S. Government, the Court finds that the Secretary is entitled to collect such debts.

The Debt Collection Improvement Act of 1996 requires HUD to refer delinquent debts to the U.S. Department of the Treasury ("Treasury") for collection. 31 U.S.C. § 3711(g). Once HUD sends a debt to Treasury, Treasury is authorized to charge HUD a fee for its collection efforts. 31 U.S.C. § 3711(g)(6). Those fees are passed on to the debtor. HUD is also required to charge the debtor interest, administrative costs, and penalties. 31 U.S.C. § 3717(a)&(e)(1)-(2). Fees and administrative costs (which includes the fee charged by Treasury) total 30% of any amount collected by Treasury. Payments made by the debtor are first applied to fees, then interest, and then principal. 31 C.F.R. § 901.9(f)." *See In Re: Brenda Archer*, OHA No. 19-AM-0097-AO-035 (March 7, 2023), at 4.

This Court 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 Joan Hattan*, HUDOA No. 11-M-NY-LL23 (June 29, 2011) at 3 citing *Bonnie Walker*, HUDBCA No. 95-G-NY-7300 (July 3, 1996). Consequently, Petitioner's allegations must fail for lack of proof.

I find that the Secretary has not acted arbitrarily or capriciously in the circumstances surrounding the creation or handling of the Note in this case. I also find no action by any Department official that could constitute fraudulent conduct in connection with the handling of the Note. The Court finds that Petitioners are indebted to the Department in the amounts claimed by the Secretary, and that the Government is entitled to enforce the full amount of its insurance claims sought in this case.

ORDER

Accordingly, it is

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative offset in the amounts claimed by the Secretary. It is

FURTHER ORDERED that the *Stay of Referral* of this matter to the U.S. Department of the Treasury for administrative offset, previously entered in this case, 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*
