

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

In the Matter of:

**Maks Reytikh**

Petitioner,

21-AM-0153-AO-025

7-210177660A

June 6, 2023

**DECISION AND ORDER**

This proceeding is before the Office of Hearings and Appeals upon a request for hearing filed by Maks Reytikh (“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 May 17, 2021, 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 May 21, 2021 (“*Notice of Docketing*”) at 2. On or about May 17, 2021, Petitioner filed his cover letter from counsel, dated May 10, 2021, attaching copies of (1) Petitioner’s Subordinate Mortgage Agreement with Carrington Mortgage Services, dated January 26, 2016 (Exh. 1); (2) Petitioner’s Loan Modification Agreement with Carrington Mortgage Services, dated July 21, 2018 (Exh. 2); and (3) the Carrington Mortgage Loan Payoff Statement, dated March 18, 2020 (Exh. 3). (Collectively referred to as “Pet.RFH”). On or about June 1, 2022, 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 legal positions.

On June 17, 2022, Petitioner was ordered a final opportunity to file documentary evidence in support of his appeal on or before July 8, 2022. *Order for Documentary Evidence*, dated June 17, 2002. That *Order* specifically notified Petitioner that “[f]ailure to comply with [that] *Order* may result in a judgment being entered in favor of the opposing party in this case or such other sanctions as the Administrative Judge deems necessary and proper, as authorized under 24 C.F.R. §26.4(c) *Id.* Petitioner did not file any additional evidence thereafter. This *Decision and Order* follows.

## DISCUSSION

The Secretary maintains that Petitioner is indebted to the Department under the terms of a Subordinate Note issued under the Department’s Partial Claim program. The Subordinate Note, dated January 30, 2016 is attached to the *Secretary’s Statement* filed in this case, (“the Note”). The Note contains Petitioner’s notarized signature. *See Sec’y Stat.*, ¶, 3; Exhibit A – Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of the U.S. Department of Housing and Urban Development; Exhibit B – the Note. The Department states that the proceeds of the Note in the amount of \$33,977.40 were used to advance funds to provide foreclosure relief to Maks Reytikh, the Petitioner in this case, to prevent his home from going into foreclosure proceedings when he fell behind on the loan payments with the primary lender, Carrington Mortgage. *Id.*, ¶ 4.

HUD came forward to assist Petitioner to pay his primary mortgage with Carrington Mortgage, and to prevent foreclosure on his home, by providing Petitioner with a subordinate loan in the amount of \$33,977.40 on January 30, 2016 to bring the primary mortgage current. Paragraph 4 of the Note states that Petitioner is required to pay off the Note in full when certain events take place. *Sec’y. Stat.*, ¶ 4. One of those events was when the primary mortgage with Carrington Mortgage was paid in full due to sale of the home, refinance, or other circumstances. On April 23, 2020, Carrington Mortgage notified the Federal Housing Administration and HUD that Petitioner had paid off his primary mortgage. This triggered Paragraph 4 of the Note, and the Note with HUD became immediately due and payable. *Sec’y. Stat.*, ¶ 5. HUD has sought repayment of the Note from Petitioner but Petitioner has yet to repay the Note. *Sec’y. Stat.*, ¶ 7.

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

- (a) \$33,977.40 as the unpaid principal balance as of April 30, 2022;
- (b) \$396.20 as the unpaid interest on the principal balance at 1% per annum through April 30, 2022;
- (c) \$2,097.72 as the unpaid penalties and administrative costs as of April 30, 2022; and
- (d) interest on said principal balance from May 1, 2022, at 1% per annum, until paid

*Id.*, ¶ 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 Department has therefore met its initial burden to prove that Petitioner is indebted to the Department in the amounts claimed by the Secretary.

Petitioner denies that he is indebted to the Department under the terms of the Note. *Pet.RFH, letter from counsel.* Petitioner claims that the Note was repaid to HUD when Petitioner repaid his primary mortgage with Carrington Mortgage on or about April 23, 2020. Although Petitioner makes numerous factual allegations claiming that HUD was repaid, Petitioner fails to provide any proof that Carrington Mortgage was acting on behalf of HUD, or that HUD received any portion of the funds that Petitioner paid to Carrington Mortgage. Petitioner argues that:

At the end of the day, the Loan Number 30000009775 and FHA Case Number FR1377548656703 reflect as belonging to the Partial Claim. The Payoff letter from Carrington reflect the amount needed to pay off loan number 30000009775 and FHA Case Number FR1377548656703. Mr. Reytikh paid off the amount set forth in the Payoff Letter and, therefore, the loans referenced in the Payoff Letter. This includes the Partial Claim. In light of the foregoing, Mr. Reytikh does not owe the amount set forth in the U.S. Housing and Urban Development Demand Letter (See "Demand Letter" attached hereto as Exhibit 4).

*Pet. RFH, cover letter from counsel.* The Court has carefully reviewed the “Demand Letter” as well as the “Payoff Statement” referred to above. Not that the “Payoff Statement” would be binding upon HUD in any way, but the express terms of that document do not purport to attribute any portion of the payoff of Petitioner’s primary mortgage with Carrington Mortgage to Petitioner’s Note with HUD.

First, the Payoff Statement nowhere contains HUD’s agreement to be bound by the terms of the letter. Second, Petitioner has filed no other evidence that could give rise to any inference that Carrington Mortgage was authorized to act on behalf of HUD in connection with the payoff of the Note. Third, the express terms of the March 18, 2020 “Payoff Statement”, included in *Pet.RFH*, listing each of the loans and expenses to be paid off at closing, nowhere lists the HUD Note of \$33,977.40. The fact that an FHA Case Number was given, perhaps for ease of reference in the caption, is of no legal consequence in the context of this case.

Petitioner has not demonstrated that Carrington Mortgage is the agent of HUD, in law or in fact. The documentary evidence provided by both parties does not establish that HUD “held itself out” as a principal on whose behalf Carrington Mortgage Services was authorized to act. FHA-insured lenders are regulated by HUD and must act in accordance with HUD’s program requirements. *See* 24 C.F.R. Part 203, *et seq.* 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. Nowhere in the HUD regulations does the language create an express or implied relationship of agency and principal between HUD and individual lenders.

With respect to the Secretary's ability to collect on just debts owed the U.S. Government, the Secretary has both the authority and duty 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).

The Secretary has addressed each of Petitioner's allegations and arguments. The Secretary correctly observes that Petitioner does not dispute that he signed these documents, and that he received the benefit of the funds that HUD paid to his lender to prevent the lender from foreclosing on his home. *Sec'y. Stat.* ¶¶ 2-8.

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. The Court finds that Petitioner is 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,**



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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*