

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

In the Matter of:

**John Chapman-Frauwirth,**

Petitioner.

22-VH-0138-AO-011

7-807963450B

December 21, 2023

**DECISION AND ORDER**

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on March 22, 2022, by John Chapman-Frauwirth (“Petitioner(s)”) 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, as amended (31 U.S.C. 3720A), authorizes federal agencies to use administrative offsets as a mechanism for the collection of debts allegedly owed to the United States government.

**JURISDICTION**

The Office of Hearings 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 at 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 HISTORY**

Pursuant to 24 C.F.R. § 17.81(a), on March 24, 2022, the Court stayed the issuance of an administrative offset of any federal payment due to Petitioner until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral (Notice of Docketing)* at 2. On September 17, 2022 and December 19, 2022, Petitioner filed his *Statement* and additional documentary evidence in support of his position. On October 28, 2022, the Secretary filed a *Statement (Sec’y. Stat.)* along with documentary evidence, in support of her position. This case is now ripe for review.

## **FINDINGS OF FACT**

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720A because of a defaulted loan that was insured against non-payment by the Secretary.

The Secretary maintains, in her *Statement*, that on November 17, 2012, Petitioner executed and delivered a Note to Admirals Bank in the amount of \$23,478.00, which was insured against nonpayment by the Secretary, pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. Petitioner failed to make payment on the Note as agreed. Consequently, in accordance with 24 C.F.R. § 201.54, on September 18, 2017, Admirals Bank f/k/a Domestic Bank, assigned the Note to the United States of America.

The Secretary is now the holder of the Note on behalf of the United States. Petitioner is currently in default on the Note. According to the Secretary, efforts have been made to collect this debt from Petitioner but such efforts have been unsuccessful. Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$21,527.99 as the unpaid principal balance as of August 31, 2022;
- (b) \$1,528.84 as the unpaid interest on the principal balance at 1.0% per annum through August 31, 2012; and
- (c) \$7,705.87 as the unpaid penalties and administrative costs as of August 31, 2022; and
- (d) Interest on said principal balance from September 1, 2022, at 1% annum until paid.

Pursuant to 24 C.F.R. § 17.65, a Notice of Intent to Initiate Administrative Offset Proceedings (“Notice”) dated March 7, 2022, was sent to Petitioner. The Secretary is requesting a finding that the Petitioner's debt is past due and legally enforceable; and that the stay of referral of this matter to the U.S. Department of Treasury for collection by Treasury Offset be vacated, so that administrative offset collection may proceed against Petitioner.

## **DISCUSSION**

Petitioner claims that he does not owe the debt because the subject debt was listed as a creditor in the bankruptcy proceeding of his co-debtor, Eric Frauwirth, and therefore discharged. More specifically, Petitioner alleges that “this debt is unenforceable due to a bankruptcy filing[.] I submitted all of my supporting documents with my initial filing for review.” As support, Petitioner offered into evidence copies of a Proof of Claim; a Chapter 13 Plan (“Plan”) issued by the United States Bankruptcy Court, District of New Hampshire, on January 30, 2017 and bearing the name of Eric Frauwirth (co-debtor); and a Verification of the Creditor Mailing List.

The Secretary in response claims that “Debt collection activity against Petitioner was suspended during the term of Eric Frauwirth’s bankruptcy[,] in accordance with the stay afforded to Petitioner as a co-debtor on the HUD debt. Eric Frauwirth’s bankruptcy was later discharged on February 22, 2022. The Chapter 13 Standing Trustee’s Final Report and Account dated March 29, 2022, indicates that no payment was issued to HUD or the Title I lender, Admiral’s Bank, through the bankruptcy. HUD’s records confirm that no payment has been received toward the debt.” According to the Secretary, upon discharge, “HUD resumed its debt collection activities against

Petitioner as he was no longer protected by the co-debtor's bankruptcy stay." While Petitioner was not a co-debtor in the bankruptcy proceeding, the Secretary claims that he was nevertheless a co-debtor on the Note. A review of the list of creditors associated with the Chapter 13 Plan also reflects that Admirals Bank was listed and not HUD. And further the record confirmed that Petitioner thereafter failed to pay in full the subject debt owed to HUD.


For Petitioner to be released from the subject debt, he must produce documentary evidence in the form of a written release or proof of consideration or present proof of a bankruptcy plan that specifically identifies HUD on the Verification List of Creditors. See Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). Petitioner failed to produce either in this case. In the absence of proof of full payment of the subject debt, HUD aptly resumed its debt collection activities against Petitioner as a co-debtor because Petitioner was no longer protected by the co-debtor's bankruptcy stay. It is well established that "assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due and legally enforceable." Sara Hedden, HUDOA No. 09-H-NY-AWG95 (July 8, 2009), quoting Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Therefore, consistent with case law precedent, Petitioner's claim fails for lack of proof.

### **ORDER**

Based on the foregoing, Petitioner must pay the debt that is the subject of this proceeding.

The *Order* imposing the stay of referral of this matter to the U.S. Department of Treasury on March 24, 2022 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.  
  
Vanessa L. Pall  
Administrative Judge

---

**Finality of Decision.** Pursuant to 31 C.F.R. § 285.11(f)(12), this constitutes the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).