

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

In the Matter of:

Baha Townhouse Ltd. Partnership,

Petitioner.

Case No. 23-AF-0122-OH-001

October 27, 2023

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a request for hearing (“*Request*”) filed by Baha Townhouse Ltd. Partnership (“Petitioner”), concerning the existence, amount, or enforceability of a debt of \$57,164 allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”). Petitioner owns and manages Baha Townhomes (“Baha”), a rental property located in Sioux Falls, South Dakota. The Secretary alleges that Petitioner incurred the debt when it impermissibly accepted subsidies from HUD for housing Mr. Velder Williams, a single person, in a two-bedroom unit between April 2018 and February 2023. Petitioner contests its liability due to, *inter alia*, Mr. Williams’ unique circumstances and inaccurate guidance from HUD’s regional office and its South Dakota affiliate.

Upon consideration of the record, this Court finds Mr. Williams’ occupancy of the two-bedroom unit violated the statutory provision proscribing single persons who do not meet certain exceptions (discussed herein) from residing in such units. As Mr. Williams meets none of the exceptions, the debt is past due and legally enforceable such that Petitioner is indebted to the Secretary for the full amount owed.

LEGAL FRAMEWORK

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 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 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 debtor has the right to review the Secretary’s case and present evidence that all or part of the debt is not past due or not legally enforceable. *See* 24 C.F.R. §§ 17.69(a)-(b). This Court will then review the Secretary’s evidence to determine whether, by a preponderance of the evidence, all or part of that debt is past due and legally enforceable. *See id.* § 17.69(c).

The Secretary may contract with a public housing agency, who in turn may contract with owners of dwelling units to subsidize those owners for renting units to low-income individuals and families. See 42 U.S.C. § 1437f. A single person who is not elderly, disabled, displaced, or the remaining member of a tenant family may not live in a subsidized unit having two or more bedrooms. See 42 U.S.C. § 1437a(b)(3)(A), 24 C.F.R. § 5.655(b)(5). A process to appeal any such violations is described in the HUD Handbook 4350.1 (“HUD Handbook”). See Dep’t. of Hous. and Urb. Dev., Handbook 4350.1, REV-1, CHG-2, 6-16 (2010).

FINDINGS OF FACT

Petitioner entered into a Housing Assistance Payments Contract with the Secretary. The South Dakota Housing Development Authority (“SDHDA”) administers the contract on HUD’s behalf. See 42 U.S.C. § 1437f. Under the contract, HUD subsidizes Petitioner to rent to low-income individuals and families. The subsidies cover the difference between the rent paid by the low-income tenants and the actual rent charged by Petitioner. Baha only has units with two or more bedrooms.

On March 26, 2018, Mr. Williams applied for a unit at Baha. He listed himself and his two minor children as the tenants on the certification questionnaire he completed. He did not provide his children’s Social Security numbers, stating his ex-wife, with whom he was disputing their custody, had that information. Petitioner accepted his application on contingency that he would obtain custody. Petitioner believed that providing Mr. Williams a stable residence would help him do so. Ultimately, his efforts were unsuccessful, but he continued to reside in the unit. HUD subsidized Petitioner for that unit until February 28, 2023, when HUD terminated the subsidies.

On October 27, 2022, SDHDA conducted a review of Baha. SDHDA informed Petitioner that Mr. Williams was impermissibly residing in the unit and demanded the subsidies be terminated and reimbursed. The alleged amount owed is \$57,164, which is the sum of the subsidies Petitioner received for the entire duration of Mr. Williams’ tenancy in the two-bedroom unit.

Petitioner worked with its HUD regional office and SDHDA to find relief. SDHDA wrongly informed Petitioner that Petitioner would only be liable for subsidies paid after April 2019.¹ Petitioner requested further relief, noting that HUD’s regional office had previously approved subsidizing Petitioner to rent a multi-bedroom unit to a single person at another of its properties to avoid long-term vacancies. Ultimately, HUD informed Petitioner that any subsidies paid to house any single person who did not qualify for a statutory exception in a multiple-bedroom unit violated 42 U.S.C. § 1437a(b)(3)(A). Thus, HUD found Petitioner liable for all subsidies received during the entirety of Mr. Williams’ tenancy.

¹ SDHDA based its decision on its opinion that Petitioner should have discovered Mr. Williams’ ineligible status when Petitioner recertified Mr. Williams’ tenancy after his first year of residence. However, HUD later determined that SDHDA’s determination was incorrect because 42 U.S.C. § 1437a(b)(3)(A) permits no such exception. See infra.

In early 2023, Petitioner discussed the issue with HUD Deputy Assistant Secretary Ethan Handelman. Petitioner states Mr. Handelman thought the case compelling but instructed Petitioner to attempt to resolve the matter with subordinates before hearing Petitioner's appeal. Petitioner then contacted SDHDA, who referred the matter to HUD. Petitioner states that HUD has yet to respond.

On June 16, 2023, HUD mailed Petitioner a *Notice of Funds Owed to HUD* ("Notice"), requesting repayment of the \$57,164 debt. On June 29, 2023, Petitioner filed its *Request*. On July 14, 2023, Petitioner replied to HUD's *Notice*, and on September 6, 2023, HUD filed the "*Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable.*"

DISCUSSION

As noted *supra*, Petitioner may present evidence to demonstrate that all or part of the debt is not past due or legally enforceable. 24 C.F.R. §§ 17.69(a)-(b). Here, Petitioner does not dispute that Mr. Williams resided in the two-bedroom unit alone during the relevant time period or that it received subsidies paid from HUD funds for Mr. Williams' occupancy. Rather, Petitioner raises arguments regarding the goodwill it showed towards Mr. Williams, the lack of one-bedroom units at Baha, inconsistent guidance from HUD and the SDHDA, and the requirements of other federal agencies, statutes, and regulations.

The statute is clear that a single person may not reside in a subsidized unit with two or more bedrooms unless certain circumstances exist to warrant an exception. *See* 42 U.S.C. § 1437a(b)(3)(A). Such circumstances consist of being an elderly, disabled, or displaced person or the remaining member of a tenant family.

Petitioner's explanations as to why the debt is not owed do not address the above circumstances. In addition, there is no evidence those circumstances apply to Mr. Williams. Thus, Petitioner's arguments are unpersuasive,² and Petitioner has failed to prove that it was permissible for Mr. Williams to reside in that subsidized unit or that Petitioner was otherwise entitled to receive the subsidies paid to it. Further, although Petitioner argues that Mr. Williams should be held liable in this matter, it is Petitioner, not Mr. Williams, that received the subsidies, and, therefore, must repay HUD the amount due. Accordingly, the Court finds HUD has proven by a preponderance of the evidence that Petitioner is indebted to the Secretary for receiving subsidies from HUD in violation of 42 U.S.C. § 1437a(b)(3)(A).

Lastly, Petitioner argues that HUD failed to provide it with due process before seeking administrative offset because Petitioner received no response to its appeal to HUD via SDHDA after Petitioner met with Mr. Handelman. While Mr. Handelman's instructions to appeal were not strictly in accordance with the guidance found in HUD Handbook and Petitioner states that

² Petitioner also points to federal eviction moratoriums under the Coronavirus Aid, Relief, and Economic Security Act (Public Law No. 116-136, § 4024) and 42 U.S.C. § 264 from March 27, 2020, thru July 24, 2020, and September 4, 2020, thru June 30, 2021, respectively, as justification Mr. Williams' continued occupancy of the two-bedroom unit. Here, Petitioner wrongly conflates terminating Mr. Williams' subsidy with eviction.

HUD has yet to respond,³ Petitioner submits no evidence suggesting it has been prejudiced by any alleged inaction of the part of HUD. Further, this hearing has provided Petitioner ample opportunity to respond to HUD's allegations and explain its position. Accordingly, there is no evidence that Petitioner has been denied due process. Thus, for the reasons discussed above, the debt is legally enforceable and past due, and Petitioner is indebted to the Secretary in the amount of \$57,164.

Although this Court lacks power to reduce the debt, Petitioner may make a written agreement with HUD to repay the amount, pursuant to 31 U.S.C. § 3716(a)(4). Petitioner may also move within twenty (20) days of the date of this decision for reconsideration before this Court, assuming a demonstration of substantial new evidence that could not have been presented previously, or Petitioner may appeal to the appropriate United States District Court. See 24 C.F.R. § 17.73(a), 5 U.S.C. §§ 701, et seq.

ORDER

For the reasons set forth above, this Court finds the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the full amount claimed by the Secretary. 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

³ The procedure to appeal a finding from a review, such as that conducted by SDHDA, is described in the HUD Handbook, which is publicly available at https://www.hud.gov/sites/documents/DOC_35338.doc. Any lack of response to Petitioner's inquiry, if true, is of concern. HUD is encouraged to contact Petitioner in regard to the status of Petitioner's inquiry.

FURTHER ORDERED that the Order imposing the *Stay of Referral* of this matter to the U.S. Department of the Treasury for administrative offset, imposed on July 10, 2023, is **VACATED**.

SO ORDERED,

**ALEXANDER
FERNANDEZ-
PONS**

Digitally signed by: ALEXANDER
FERNANDEZ-PONS
DN: CN = ALEXANDER FERNANDEZ-
PONS C = US O = U.S. Government
OU = Department of Housing and Urban
Development, Office of the Secretary
Date: 2023.10.27 12:05:17 -04'00'

Alexander Fernández-Pons
Administrative Law 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.).