

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

In the Matter of:

Dimitris and Andrea Baldwin,

Petitioners.

HUDOA 12-AM-CH-AO-47

Claim No. 7-210072100B

April 8, 2013

DECISION AND ORDER

Dimitris and Andrea Baldwin (“Petitioners”) were notified that pursuant to 31 U.S.C. §§ 3716 and 3720A, the Secretary of the U.S. Department of Housing and Urban Development (“HUD”) intended to seek administrative offset of any federal payments due to Petitioners in order to satisfy Petitioners’ alleged debt to HUD.

On September 11, 2012, Petitioners requested a hearing concerning the existence, amount, or enforceability of the alleged debt. The Office of Hearings and Appeals has been designated to conduct a hearing to determine whether the debt is legally enforceable. 24 C.F.R. § 17.69(c). As a result of Petitioners’ hearing request, referral of the debt to the U.S. Department of the Treasury for the administrative offset was temporarily stayed by the Court on September 12, 2012, until the issuance of a written decision by the Administrative Judge. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated Sept. 12, 2012).

Background

On or about November 1, 2001, Petitioners executed and delivered to the Secretary a Subordinate Note (“Note”). In exchange, the Secretary paid the arrearages on Petitioners’ FHA-insured mortgage and Petitioners avoided foreclosure of their primary residence. (Secretary’s Statement (“Sec’y Stat.”) ¶ 2, filed Feb. 2, 2013; Ex. 1, Note.) The Secretary paid this partial claim pursuant to 24 C.F.R. 203.371. *Id.* A Subordinate Mortgage securing the Note was also executed and recorded. (Sec’y Stat., ¶ 2; Ex. 2, Subordinate Mortgage.) The amount to be repaid under the Note is \$13, 483.62, and becomes due and payable when the borrower pays the primary note in full or when the primary note is no longer insured by the Secretary. (Sec’y Stat., ¶ 3; Ex. 1.) On or about September 4, 2007, the FHA mortgage insurance on the primary mortgage was terminated as the lender indicated the mortgage was paid in full. (Sec’y Stat., ¶ 4; Ex. 3, Declaration of Brian Dillon¹ (“Dillon Decl.”)). Thus, the Secretary contends that pursuant to the terms and conditions of the Note, payment is due in full. (Sec’y Stat., ¶ 5.)

¹ Dillon is the Director of the Asset Recovery Division of HUD’s Financial Operations Center.

HUD has attempted to collect the amount due under the Note, but the Secretary asserts that Petitioners remain delinquent and indebted to HUD. (Sec’y Stat., ¶ 6; Ex. 3, Dillon Decl., ¶ 5.) The Secretary contends that Petitioners are justly indebted to the Secretary in the following amounts:

- a. \$13,483.62 as the unpaid principal balance as of December 31, 2012;
- b. \$190.91 as the unpaid interest on the principal balance at 1.0% per annum through December 31, 2012;
- c. \$1,810.29 as the unpaid penalties and administrative costs as of December 31, 2012; and
- d. interest on said principal balance from January 1, 2013, at 1.0% per annum until paid.

(Dillon Decl. ¶ 6.)

A Notice of Intent to Collect by Treasury Offset dated October 24, 2011, was mailed to Petitioners. (Sec’y Stat., ¶ 7; Ex. 3, Dillon Decl., ¶ 6.)

Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A, provides federal agencies with the remedy of administrative offset of federal payments for the collection of debts owed to the United States Government. In these cases, Petitioners bear the initial burden of submitting evidence to prove that the debt is not past-due or legally enforceable. 24 C.F.R. § 17.69(b); Juan Velazquez, HUDBCA No. 02-C-CH-CC049 (Sept. 25, 2003).

On or about September 11, 2012, this Court received a letter from Petitioners requesting a hearing. (Pet’rs’ H’rg Req., dated August 13, 2012.) In the *Hearing Request*, Petitioners state, “[w]e did not know this debt existed until we received your Notice of Intent.” Id. Petitioners claim that, “[i]n September and October of 2001, we made arrangements with Countrywide to bring our mortgage current ... During this time we never received a separate statement for a subordinate mortgage or a Truth in Lending Statement or HUD-1 for a second mortgage.” Id. Further, Petitioners claim that when they refinanced with Countrywide in 2007, that they “were not informed at that time [that they] owed Countrywide any additional or subordinate mortgages.” Finally, Petitioners allege:

we were defrauded by Countrywide [when they] increased our mortgage by \$68,801 but failed to apply the loan proceeds to all debt they claim we owed them; at the same time they defaulted the second mortgage, of which we were unaware even existed, and then submitted a claim for that mortgage to FHA.

Id.

In response, this Court issued a Notice of Docketing, Order, and Stay of Referral ordering Petitioners to file documentary evidence supporting their claim that the alleged debt to HUD is

not enforceable and past due. (Notice of Docketing, at 2.) On October 24, 2012, this Court again ordered Petitioners to file documentary evidence in support of Petitioners' position. Order for Documentary Evidence, dated October 24, 2012. Petitioner failed to comply with either Order.

On January 24, 2013, this Court ordered the Secretary to file documentary evidence to prove that Petitioners' alleged debt to HUD is past due and legally enforceable. In response to that Order, on February 22, 2013, the Secretary submitted a Statement that Petitioners' debt is past due and legally enforceable supported by a copy of the Subordinate Note dated November 1, 2001, in the amount of \$13, 483.62, and a copy of the Mortgage dated November 29, 2001, both signed by Petitioners. The Subordinate Note clearly identifies the Secretary of Housing and Urban Development and its successors and assigns as the lender. (Note ¶ 1.) The Subordinate Note also lists different instances when the Note would become payable, including payment in full of the primary note.

On March 8, 2013, Petitioners filed an affidavit with documentary evidence in support of their position that the Subordinate Note is not past due or enforceable. (Pet'rs' Afft., dated March 1, 2013.) As evidence, Petitioners submitted various agreements between Countrywide and Petitioners regarding Mortgage Modifications in 2003 and 2005. In addition, Petitioners submitted a Settlement Statement regarding refinancing in 2007. However, these documents are agreements between Countrywide and Petitioners, where the Secretary was not a party.

In their affidavit, Petitioners do not dispute the authenticity or amount of the Subordinate Note. Rather, Petitioners reassert their claim that they were "deliberately defrauded by Countrywide Home Loans." (Pet'rs' Afft.) Petitioners specifically argue that when they refinanced with Countrywide in 2007, the Note was not included in the refinancing. Petitioners further contend that they were defrauded because Countrywide did not tell Petitioners about the subordinate mortgage.

Per the terms of the Subordinate Note, it did not become due and payable until the primary note was paid in full when Petitioners refinanced in 2007. (Note ¶ 4.) In addition, the Subordinate Note was between the Secretary of HUD and Petitioners. Countrywide was not a party to the Subordinate Note. Petitioners' notice of the terms of the Subordinate Note is the Subordinate Note itself, which Petitioners do not dispute signing in 2001.² Per the terms of the Subordinate Mortgage, the "Borrow will pay those amounts to Lender when Lender sends Borrow a notice requesting that Borrower do so." (Sec'y Stat., Ex. 2.)

In sum, Petitioners have failed to prove that the debt is not past due or legally enforceable. I therefore find that the Secretary is entitled to collect the debt through administrative offset.

² It is presumed that Petitioners understood the terms of the Note that they signed.

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioners in the amount claimed by the Secretary. Therefore, 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**. It is

FURTHER ORDERED that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative offset of any federal payment due Petitioners.

SO ORDERED.



H. Alexander Manuel
Administrative Judge