

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

In the Matter of:

REGINA DONNA THOMPSON,

Petitioner.

HUDOA No. 12-M-NY-PP27
Claim No. 7-21007106

October 18, 2012

DECISION AND ORDER

Regina Donna Thompson (“Petitioner”) was notified that, pursuant to 31 U.S.C. §§ 3716 and 3720A, the Secretary of the U.S. Department of Housing and Urban Development (“the Secretary”) intended to seek administrative offset of any federal payments due to Petitioner in satisfaction of a delinquent and legally enforceable debt allegedly owed by Petitioner to HUD.

On February 14, 2012, Petitioner requested a hearing concerning the debt she allegedly owes to HUD. The administrative judges of this Office have been designated to conduct hearings to determine whether the debt is legally enforceable. 24 C.F.R. §§ 17.69 and 17.73. In response to Petitioner’s hearing request, this Office stayed referral of the debt to the U.S. Department of Treasury for offset on February 14, 2012. (Notice of Docketing, Order and Stay of Referral (“Notice”), February 14, 2012.)

Background

On or about April 25, 2002, the HUD-insured loan on Petitioner’s home was in default. (Secretary’s Statement (“Sec’y Stat.”) ¶ 2, dated February 24, 2012.) To prevent a foreclosure, HUD advanced funds to Petitioner’s lender in a sum sufficient to bring the primary note current. (*Id.* at ¶ 3.) On April 25, 2002, Petitioner executed a Subordinate Note (“Note”) in favor of the Secretary in the amount of \$3,803.80. (*Id.* at ¶ 4 and Exh. A, Note.)

Paragraph 4(i) of the Note provides that it becomes due and payable upon the primary note being paid in full. (Sec’y Stat. ¶ 5; Sec’y Exh. B.) On or about October 7, 2004, the Secretary was notified that the FHA insurance on Petitioner’s primary note was terminated as the primary note had been paid in full. (Sec’y Stat. ¶ 6.) This rendered the Note immediately due and payable.

Pursuant to the Note, payment was to be made to HUD at the “Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410 or such other place as Lender may designate in writing by

notice to Borrower.” (Note, at ¶ 4(II).) Petitioner failed to make any payments on the Note. (Sec’y Stat. ¶ 8.)

The Secretary attempted to collect on the Note from Petitioner, but has been unsuccessful. (Sec’y Stat., ¶ 9.) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$3,803.80 as the unpaid principal balance as of January 31, 2012;
- b) \$28.53 as the unpaid interest on the principal balance accruing at a rate of 1% per annum through January 31, 2012;
- c) \$134.09 as the unpaid penalties and administrative costs through January 31, 2012; and
- d) interest on said principal balance from February 1, 2012 accruing at a rate of 1% per annum until paid the principal balance is paid in full.

(Sec’y Stat. ¶ 9; Dillon Decl. ¶ 5.) A Notice of Intent to Collect by Treasury Offset dated August 1, 2011 was sent to Petitioner. (Sec’y Stat. ¶ 10.) A second Notice of Intent to Collect by Treasury Offset, dated January 23, 2012, was sent to Petitioner at her current address. (Id.)

Discussion

Petitioner does not dispute the existence or amount of her alleged debt to HUD. Rather, Petitioner claims that the imposition of an administrative wage garnishment would inflict upon her a financial hardship. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), received February 14, 2012.) Although this Office acknowledges Petitioner’s financial circumstances, the Office also notes that financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. Raymond Kovalski, HUDBCA No. 87-1681-G18 (December 8, 1986). The law provides that “unfortunately, in administrative offset cases evidence of financial hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past-due and enforceable.” Edgar Joyner, Sr., HUDBCA No. 04-A-CH-EE052 (June 15, 2005); Anna Filiziana, HUDBCA No. 95-A-NY-T11 (May 21, 1996); Charles Lomax, HUDBCA No. 87-2357-G679 (February 3, 1987). Furthermore, no regulation or statute currently exists that permits financial hardship to be considered as a basis for determining whether a debt is past-due and enforceable in cases involving debt collection by means of administrative offset. Thus, consistent with case law precedent and statutory limitations, I find that financial hardship cannot be considered as a defense in this case as the debt owed by Petitioner is sought to be collected by means of administrative offset.

Aside from her financial hardship claim, Petitioner has not proffered any arguments for why the debt in this case is past due and legally enforceable despite being ordered on two separate occasions to do so. (Notice of Docketing; Order for Documentary Evidence, issued May 23, 2012.) This Office has consistently found that “assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.” Troy Williams, HUDOA No. 09-M-CH-AWG52, (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300, (July 3, 1996)). I find that Petitioner’s appeal of the Secretary’s decision

to initiate administrative offset fails for want of proof. I further find that Petitioner is indebted to HUD in the amount claimed by the Secretary.

ORDER

For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for offset is **VACATED**.

It is hereby ORDERED that the Secretary is authorized to seek collection of this outstanding debt obligation by means of treasury offset to the extent authorized by law.



H. Alexander Manuel
Administrative Judge