

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

In the Matter of:

TERRI L. FIELDS,

Petitioner.

Case No. 13-AM-0072-AO-001

Claim No. 7-210074990A

June 10, 2013

DECISION AND ORDER

Terri L. Fields (“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 (“HUD” or “the Secretary”) intended to seek administrative offset of any federal payment due to Petitioner in order to satisfy Petitioner’s alleged debt to HUD.

On January 14, 2013, Petitioner requested a hearing concerning the existence, amount, or enforceability of the alleged debt. The Office of Hearing 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 Petitioner’s hearing request, referral of the debt to the U.S. Department of the Treasury for administrative offset was temporarily stayed by the Court on January 16, 2013, until the issuance of a written decision by the Administrative Judge. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated January 16, 2013.)

Background

The Secretary states that on or about May 11, 2006, Petitioner executed and delivered to the Secretary a Subordinate Note in the amount of \$6,349.75. (Secretary’s Statement (“Sec’y Stat.”) ¶ 2, filed February 12, 2013; Ex. 1, Note.) In exchange, the Secretary advanced funds to Petitioner’s FHA-insured mortgage lender to provide foreclosure relief. (Sec’y Stat. ¶ 3.) The Note cited specific events that made the debt become due and payable, one of these events being if the Petitioner has paid in full all amounts due under the primary note and related mortgage insured by the FHA. (Declaration of Kathleen M. Porter¹ (“Porter Decl.”) ¶ 4.)

On or about August 22, 2011, the FHA insurance on the first mortgage was terminated as the lender indicated the mortgage was paid in full. (Porter Decl. ¶ 4.)

HUD has attempted to collect the amount due under the Subordinate Note and asserts that Petitioner remains delinquent and indebted to HUD. (Sec’y Stat. ¶ 6, Porter Decl. ¶ 5.) The Secretary contends that Petitioner is justly indebted to the Secretary in the following amounts:

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

- (a) \$6,349.75 as the unpaid principal balance as of December 31, 2012;
- (b) \$15.87 as the unpaid interest on the principal balance at 1% per annum through December 31, 2012; and
- (c) interest on said principal balance from January 1, 2013 at 1% per annum until paid.

(Porter Decl. ¶ 5.)

A Notice of Intent to Collect by Treasury Offset dated December 24, 2012 was mailed to Petitioner. (Sec’y Stat. ¶ 4, Ex. 3, Porter 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 by debtors. In these cases, Petitioners bear the initial burden of filing evidence to prove that the debt is not past-due or legally enforceable. 24 C.F.R. Sec. 17.69(b); Juan Velazquez, HUDBCA No. 02-C-CH-CC049 (Sept. 25, 2003).

On or about January 14, 2013, this Court received a letter from Petitioner requesting a hearing concerning the existence, amount, or enforceability of the debt to HUD. (Hearing Request, dated January 8, 2013). In the *Hearing Request*, Petitioner claimed that she did not “feel that [she] owes this dept [sic].” (Petitioner’s Hearing Request (“Pet’r’s Hr’g Req.”), received January 14, 2013.)

In response, the Secretary asserts that the Petitioner’s claim is not supported by evidence that the unpaid principal balance of \$6,349.75 and applicable interest was paid, and the Petitioner has not provided any evidence to controvert the existence, amount, and validity of the debt. (Sec’y Stat. ¶ 8.) Thus, the Secretary contends that the Note remains unsatisfied and the debt is enforceable. Id.

This office has consistently maintained 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-A WG52, (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300, (July 3, 1996))) In the *Notice of Docketing*, the Court ordered Petitioner to file documentary evidence supporting her claim that the alleged debt to HUD is not enforceable or past due. (Notice of Docketing, at 2.) Upon Petitioner’s failure to respond, this Court again ordered Petitioner to file documentary evidence in support of Petitioner’s position. (Order for Documentary Evidence, dated March 25, 2013.) Petitioner was notified that, “failure to comply with this Order may result in the imposition of sanctions that may include...a decision based on the documents of record.” (emphasis in original) (Id.)

Petitioner failed to comply with both orders issued by this Court. To date, Petitioner has only furnished the Court with the assertions made in Petitioner’s *Hearing Request* bereft of any documentary evidence to support them. Since Petitioner, despite repeated urging, has failed to offer any evidence that the debt alleged by the Secretary is not past due or unenforceable, Petitioner’s argument fails for want of proof. I therefore find that Petitioner is indebted to the

Secretary in the amounts claimed by the Secretary and that the Secretary is entitled to collect this debt through administrative offset.

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, dated January 16, 2013, 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.

SO ORDERED.



H. Alexander Manuel
Administrative Judge