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

In the Matter of: **Nadine Duhaney** Petitioner.	Case No. 13-AM-0119-AO-005 Claim No. 721000810 August 26, 2013

DECISION AND ORDER

On May 13, 2013, Petitioner Nadine Duhaney ("Petitioner") requested a hearing challenging the U.S. Department of Housing and Urban Development's ("HUD") administrative offset of a portion of Petitioner's 2012 federal income tax refund. Pursuant to 31 U.S.C. §§ 3716 and 3720A, the offset was used to satisfy a past due debt allegedly owed to HUD. Petitioner contests the enforceability of the alleged debt and requests a refund of $1,886.58. The Office of Hearing and Appeals has been designated to conduct a hearing to determine whether the alleged debt is valid and legally enforceable. 24 C.F.R. § 17.69(c). (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), dated May 15, 2013.)

Background

On or about August 26, 1998, Petitioner executed and delivered to the HUD Secretary a Subordinate Note ("Note") in the amount of $3,990.00. In exchange, the Secretary paid the arrearages on Petitioner's FHA-insured mortgage, thereby avoiding foreclosure of Petitioner's home. (Secretary's Statement ("Sec'y Stat.") ¶¶ 2-3, filed June 24, 2013; Ex. A, Declaration of Brian Dillon ("Dillon Decl.")[1], ¶ 3; Ex. B, Note.) The Note listed Petitioner's address as 3803 SW 69th Avenue, Miramar, Florida 33023 ("69th Ave. address"). (Note, p. 1.) Petitioner did not make payment on the Note as agreed. (Sec'y Stat. ¶ 5; Dillon Decl., ¶ 3.) Accordingly, HUD initiated collection actions on November 29, 2006. (Dillon Decl., ¶ 7.)

On May 16, 2006, Morris-Griffin/First Madison Services mailed a demand letter ("M-G Demand Letter") to the 36th Ave. address on behalf of HUD. (Supplemental Secretary's Statement ("Sec'y Supp. Stat."), filed July 12, 2013; Ex. A, Supplemental Declaration of Gary Sautter ("Sautter Supp. Decl.")[2], ¶ 3; Ex. B, M-G Demand Letter.) On December 12, 2006, HUD mailed another Demand Letter ("HUD Demand Letter") to the 36th Ave. address. (Sec'y Stat., ¶ 7; Dillon Decl., ¶ 5.) On January 28, 2008, HUD mailed a Notice of Intent to Collect by Treasury Offset ("Notice of Intent") to the same address. (Sec'y Stat., ¶ 9; Dillon Decl., ¶ 6.) Petitioner did not respond to either mailing. The alleged debt was then transferred to the U.S. Department of Treasury's Treasury Offset Program ("TOP").

On March 7, 2013, HUD received a TOP offset of $5,876.58 from Petitioner's federal income tax refund. The offset consisted of:

[1] Brian Dillon is Director of the Asset Recovery Division of HUD's Financial Operations Center.

[2] Gary Sautter is the current Acting Director of the Asset Recovery Division.

a. $3,990.00 as the unpaid principal balance on the loan
b. $1,013.90 as the unpaid interest on the loan
c. $872.08 as penalties and administrative costs
d. $17 Treasury fee

(Sec'y Stat., ¶ 14; Dillon Decl., ¶ 7.)

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. Petitioners bear the initial burden of submitting 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).

Here, Petitioner does not dispute the existence or amount of the principal debt. Rather, Petitioner challenges the interest, penalties, and fees that have been assessed against the original debt. Petitioner contends that (1) HUD failed to provide her with notice of the debt prior to offset of her federal tax refund; (2) HUD could have obtained her proper address by consulting the Internal Revenue Service; (3) the date on the M-G Demand Letter is inconsistent with HUD's other evidence that Petitioner was notified in May of 2006; (4) HUD's evidence from the Debt Collection and Asset Management System ("DMCS" or "DCAMS") is unauthenticated and inadmissible under the Federal Rules of Evidence; (5) the HUD Demand Notice and the Notice of Intent are inadmissible because they are mere form letters that bear no relation to Petitioner specifically. Petitioner asserts that "the failure of HUD to timely and properly notify her of its DEMAND and NOTICE is in violation of (a) 24 C.F.R. Section 17.65; (b) 31 USC Section 3720A(b); and (c) *Debt Collection Handbook, Directive Number:* 1900.24, U.S. Handbook 1900.25 REV-4, issued: April 6, 2012," and that Petitioner is entitled to a refund of $1,886.58. (Reply to Notice of Docketing, Order, and Stay of Referral ("Reply"), dated June 14, 2013.) She also contends that the lack of notice violates 31 C.F.R. § 901.2. (Petitioner's Reply to the Supplemental Secretary's Statement ("Reply to Sec'y Supp. Stat."), filed July 18, 2013.)

HUD regulations state that, prior to initiating any administrative offset process, the Secretary must "make written demand upon the debtor" and "send written notice of intent to offset to the debtor" at the "most current address that is available to the Secretary." 24 C.F.R. § 17.65. Petitioner asserts that she never received the M-G Demand Letter, the HUD Demand Letter, or the Notice of Intent, and so never had the opportunity to contest the debt before her federal tax return was offset. The government notes, however, that the notice requirement is fulfilled when HUD sends notice to the last known address, not when the debtor actually receives the notice. (Sec'y Stat., ¶¶ 8-10) (citing KB Home Mortgage Company-1, HUDOA No. 08-H-CH-JJ68 (March 20, 2009) ("there is no requirement within the governing regulations that receipt of the notice is required to establish the sufficiency of notice of a demand for payment.").) All three documents were sent to the 69th Ave. address, which was the property address identified on the Note. Moreover, the Note states that all necessary notices "shall be directed to the Property Address or any other address Borrower designates by notice to Lender." (Sec'y Stat., Ex. B., p. 2, ¶ 4.)

Petitioner has not alleged that she ever provided HUD with another mailing address. Accordingly, the 69th Ave. address was the only address HUD had on file. None of the documents sent to that address were returned by the U.S. Postal Service as "undeliverable." HUD therefore had no reason to suspect that Petitioner no longer lived at that address.[3] Accordingly, I find that HUD followed proper notification procedures in attempting to inform Petitioner of the debt and HUD's intent to recover said debt via administrative offset.

Petitioner contends that HUD "could have obtained her addresses in the State of Georgia from the Department of Treasury." (Reply to Sec'y Supp. Stat., ¶ 5.) As support, she offers copies of her 2003 state and federal income tax returns, which both show an address in Covington, Georgia. She also references HUD's *Debt Collection Handbook*, which states:

> When attempting to locate a debtor in order to collect or compromise a debt, agencies may obtain a debtor's mailing address through the Department of Treasury TOP Client database as well as from other agencies..."

Id. at n.1 (citing DEBT COLLECTION HANDBOOK, Directive Number: 1900.25 REV-4, pp. 2-5 (2012).

It is true that HUD could theoretically have consulted the Treasury Department, and thus acquired Petitioner's new mailing address. The Agency also could have searched any of the three major credit reporting agencies, or utilized several of the other suggestions offered in the *Handbook*. However, as HUD asserts, it is under no obligation to search for an alternative address under the circumstances of this case. (Secretary's Response to Petitioner ("Sec'y Resp."), ¶ 8, filed July 19, 2013.) As previously noted, HUD had no reason to doubt the address it had on file at the time the notices were sent. I find that the notifications were therefore valid.

Next, Petitioner argues that the M-G Demand Letter states that it was sent on May 16, 2006, while HUD's DMCS records show a "Last Demand" date of December 12, 2006. Petitioner suggests that this is evidence that the M-G Demand Letter was not actually sent. The Court disagrees. The M-G Demand Letter was merely an "initial" demand. HUD later followed with another demand letter in December which was the "last" demand. There is therefore nothing inconsistent about the two dates.[4]

Petitioner also alleges various evidentiary defects with HUD's evidence. Specifically, she contends that the M-G Demand Letter is unreliable because it is not signed or authenticated, the HUD Demand Letter is inadmissible because it is a form letter, the Notice of Intent is

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[3] By comparison, in a 2008 case, HUD's Notice of Intent was returned as unclaimed. The Agency was thus aware that the debtor no longer lived at the address on record. It then conducted a "Social Search Report" and sent another Notice of Intent to the debtor's P.O. Box. However, HUD mislabeled the second notice and sent it to the wrong P.O. Box. The Court found that HUD had not provided reasonable notice, and refunded the administrative offset. Shirley Robinson, a/k/a/ Shirley Watts, HUDOA No. 08-H-CH-JJ43 (2008).

[4] Petitioner's confusion on this point is understandable. The *Secretary's Statement* and the *Dillon Declaration* make reference to "a demand letter," in the singular, which was mailed on December 12, 2006. The *Secretary's Supplemental Statement*, however, identifies the demand letter sent on May 16, 2006, but again implies it was the only demand letter sent. At the time Petitioner raised this argument, only the *Sautter Declaration* had referenced both demand letters.

inadmissible because it is a form letter, and the DMCS evidence is inadmissible because it is not authenticated and so does not comply with the Federal Rules of Evidence.

Petitioner's reliance on the Federal Rules of Evidence is misplaced. Those rules are a helpful guide in determining whether evidence should be admitted, but they do not control the Court's decision-making process here. Yet, and still, the M-G Demand Letter and the DMCS print-outs are documents created and kept in the regular course of HUD's business, and so would be admissible under the business records exception. Moreover, their authenticity has been sworn to by either Brian Dillon or Gary Sautter, under penalty of perjury. There is no reason to doubt the credibility of these senior HUD officials. The Court has generally found such testimony to be sufficient to meet the Government's burden of proof. Petitioner has provided no basis for questioning the sworn declarations of the HUD officials in this case.

Petitioner's argument that the HUD Demand Letter and the Notice of Intent introduced as evidence are both form letters, and thus are of limited probative value is similarly unavailing. In the *Order for Documentary Evidence*, the Court permitted the Secretary to file evidence that "may consist of an affidavit, sworn declaration, or other corroborating materials to support the Secretary's legal and factual arguments." (Order for Documentary Evidence, issued June 17, 2013.) The DMCS records and the sworn testimony of Dillon and Sautter are compelling and uncontroverted evidence that the notices were sent to Petitioner at her last known address. Accordingly, I find that Petitioner has failed to prove by a preponderance of the evidence that the debt is not legally enforceable.

ORDER

For the reasons set forth above, I find that Petitioner was properly notified of the existence and amount of the alleged debt, and was afforded the opportunity to contest said debt prior to the administrative offset of her federal income tax refund. The interest, penalties, and administrative costs were therefore properly added to her overall debt. A refund of those costs is not warranted. It is thus hereby

ORDERED that Petitioner's request for a refund is **DENIED**.

H. Alexander Manuel
Administrative Judge