

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

In the Matter of:

**LEAH RAWSON,**

Petitioner.

HUDOHA 14-VH-0015-AO-002  
Claim No. 7-80755879OB

July 30, 2014

**DECISION AND ORDER**

On October 24, 2013, Leah Rawson (“Petitioner”) filed a Hearing Request after being 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 payments due from Petitioner in satisfaction of a delinquent and legally enforceable debt allegedly owed to HUD.

The administrative judges of this Court have been designated to determine whether the alleged debt in contested administrative offset proceedings is enforceable against the debtor. 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. §17.81(b). The administrative judges of the Office of Hearings and Appeals have been designated to conduct a hearing to determine whether the debt allegedly owed to HUD is legally enforceable. 24 C.F.R. §§ 17.69, 17.73. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). In addition, Petitioner may present evidence that the terms of the repayment schedule are unlawful, would cause an undue financial hardship to Petitioner or that collection of the debt may not be pursued due to operation of law. *Id.*

**Procedural History**

The Court issued a *Notice of Docketing, Order, and Stay of Referral* (“*Notice of Docketing*”) in which the Court stayed referral by HUD of this matter to the U.S. Department of Treasury for administrative offset of any payment due Petitioner until authorized by the issuance of this written decision. *Notice of Docketing, 2.* On September 12, 2013, the Secretary filed his *Statement* along with documentation in support of his position. The Court then issued two subsequent Orders to the Petitioner, an *Order for Documentary Evidence* on September 27, 2013, and an *Order to Show Cause* on October 24, 2013. To date, Petitioner has failed to respond to the Court by complying with the Orders issued by the Court. This case is now ripe for review.

## Background

On or about October 18, 2011, Petitioner executed and delivered to US Remodelers, Inc., a Retail Installment Contract Home Improvement ("Note") in the amount of \$7,499.75. *Secretary's Statement* ("Sec'y Stat."), ¶ 2; filed November 7, 2013. The Note was insured against nonpayment by Secretary pursuant to Title 1 of the National Housing Act. *Sec'y Stat.* ¶ 3; *Ex. 2, Declaration of Brian Dillon*<sup>1</sup> ("Dillon Decl.") ¶ 3. Petitioner failed to make payments as agreed in the Note, and the Note was assigned to HUD by U.S Bank National Association pursuant to the requirements on the Title I Insurance Program.<sup>2</sup> *Sec'y Stat.* ¶ 4, *Ex. 2, Dillon Decl.*, ¶ 3.

HUD attempted to collect the amount due under the Note, but Petitioner remains indebted. *Sec'y Stat.* ¶ 5, *Ex. 2, Dillon Decl.*, ¶ 4. As a result, HUD contends that Petitioner is indebted to the Secretary in the following amounts:

- a) \$6756.41 as the unpaid principal balance as of October, 21, 2013; and,
- b) interest on said principal balance from October 21, 2013, at 4% per annum until paid.

*Sec'y Stat.* ¶ 6, *Ex. 2, Dillon Decl.*, ¶ 4.

A Notice of Intent to Collect by Treasury Offset dated October 7, 2013 was sent to Petitioner. *Sec'y Stat.*, ¶ 7; *Dillon Decl.*, ¶ 5.

## DISCUSSION

In administrative offset cases such as the instant case, "a debtor who receives notice of intent to offset pursuant to §17.65 has the right to a review of the case and to 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). Here, Petitioner requested "to have a review of HUD's initial determination that the debt is past due and legally enforceable." *Petitioner's Hearing Request, "Hr'g Req."*, filed October 24, 2013.

Pursuant to 24 C.F.R. § 17.69(b), the debtor's evidence that shows that all or part of the debt is not past due or legally enforceable must be submitted to the Court within 60 calendar days.<sup>3</sup> *A failure to timely submit evidence will result in a dismissal of the request for review by the Court.* (emphasis added) *Id.*

In this case, Petitioner was ordered on three occasions to file documentary evidence in support of her position, but to date, Petitioner has failed to respond or comply with the Court's

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<sup>1</sup> Brian Dillon is the Director of the Asset Recovery Division of HUD's Financial Operations Center.

<sup>2</sup> U.S. Bank National Association was the lawful holder of the note pursuant to assignments, dated November 18, 2011, and December 20, 2011. *Ex. 1, Note.*

<sup>3</sup> The deadline for such documentary evidence may be extended where necessary. *See* 24 C.F.R. § 26.11(d).

orders. (*Notice of Docketing*, dated October 25, 2013; *Order for Documentary Evidence*, dated December 9, 2013; and *Order to Show Cause*, dated January 9, 2014.) As such, there is no evidence of record for the Court to examine the credibility of Petitioner's position.

On the other hand, the Secretary has met his burden of proof to show that the alleged debt exists in the amount claimed by the Secretary. See 24 C.F.R. § 17.67(b). The Secretary provided a copy of the Note, signed by Petitioner, in the amount of \$7,499.75. In addition, the Secretary provided a copy of a sworn declaration from the Director of HUD's Asset Recovery Division as further proof that the debt amount claimed by the Secretary was credible.

There is no evidence of record that either refutes or rebuts the evidence presented by the Secretary. As a result, the Court finds, consistent with case law precedent, that the debt that is the subject of this proceeding is past due and legally enforceable. *See Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (*citing Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996) and holding that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or unenforceable").

As a final point, § 26.4(c) of Title 24 of the Code of Federal Regulations provides that:

If a party refuses or fails to comply with an order of the hearing officer, including an order compelling discovery, the hearing officer may enter any appropriate order necessary to the disposition of the hearing including a determination against the noncomplying party....


(Emphasis added).

Thus I find that, pursuant to section 26.4(c), Petitioner's non-compliance with the Orders issued by this Court provides an additional basis for rendering a decision against Petitioner.

### ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative offset is **VACATED**. It is hereby

**ORDERED** that the Secretary is authorized to seek collection of this outstanding debt by means of administrative offset of any federal payment due Petitioner.

  
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Vanessa L. Hall  
Administrative Judge