

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

In the Matter of:

**Bryan Trantham,**

Petitioner.

HUDOHA 14-VH-0040-AO-004

August 6, 2014

**DECISION AND ORDER**

Petitioner, Bryan Trantham, was notified pursuant to 31 U.S.C. §§ 3716 and 3720A, that the Secretary of the U.S. Department of Housing and Urban Development (“HUD”) intended to seek administrative offset of any federal payments due to Petitioner in satisfaction of a delinquent and legally enforceable debt allegedly owed to HUD. On March 28, 2013, Petitioner requested a hearing concerning the existence, amount, or enforceability of the alleged debt.

**Applicable Law**

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. § 17.61. The administrative judges of the Office of Hearings and Appeals, in accordance with the procedures set forth at 24 C.F.R. §§ 17.69 and 17.73, have been designated to conduct a hearing to determine whether the alleged debt is past due and legally enforceable.

**Procedural History**

Pursuant to 24 C.F.R. § 17.81(a), on April 1, 2013, this Court stayed the issuance of an administrative offset of any federal payment due Petitioner until the issuance of this written decision. *Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”), 2. On May 1, 2013, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has failed to file any documentary evidence in support of his position that the alleged debt has been paid in full. *See Notice of Docketing, Order for Documentary Evidence* filed February 10, 2014; *Order to Show Cause*, filed March 10, 2014. This case is now ripe for review.

**Background**

Petitioner became delinquent on his mortgage payments of a loan insured against default by the Federal Housing Administration (“FHA”), which is a part of HUD. (*Secretary Statement, “Sec’y. Stat.”*) ¶ 2, filed May 1, 2014; Ex. A, *Declaration of Brian Dillon* (“*Dillon Decl.*”), ¶ 5.)

As a means of providing foreclosure relief, HUD advanced funds to Petitioner's FHA insured mortgage lender to bring his mortgage current. (*Sec'y Stat.*, ¶ 4.)

In exchange for such funds, Petitioner "executed a Subordinate Note ("Note") in favor of the Secretary, dated May 11, 2006." (*Sec'y Stat.*, ¶ 2; Ex. 1, Note.) By its terms, the Note was payable on April 1, 2041, or upon the occurrence of certain events, to wit: "(i) Borrower has paid in full all amounts due under the primary Note and related mortgage, deed of trust or similar Security Instruments insured by the Secretary, or (ii) The maturity date of the primary Note has been accelerated, or (iii) The primary Note and related mortgage, deed of trust or similar Security Instrument are no longer insured by the Secretary, or (iv) The property is not occupied by the purchaser as his or her principal residence." *Id.* ¶ 4(A) (i)-(iv).

On or about January 15, 2013, the FHA insurance on Petitioner's primary mortgage was terminated as the lender notified HUD that the primary mortgage was paid in full. (*Sec'y Stat.*, ¶4; *Dillon Decl.*, ¶4.) Notwithstanding these events, the Note was not paid off upon payment in full of the primary mortgage or the termination of the FHA insurance. Accordingly, HUD issued a "Notice of Intent to Collect by Treasury Offset" to Petitioner on or about October 28, 2013. (*Sec'y Stat.*, ¶5, Ex. 2 *Dillon Decl.*, ¶6.)

The Secretary has attempted to collect on the Note, but Petitioner remains in default. As a result, the Secretary alleges that Petitioner is indebted to the Secretary in the following amounts:

- (a) \$25,959.11 as the unpaid principal balance as of February 28, 2014;
- (b) \$151.34 as the unpaid interest on the principal balance at 1.0% per annum through February 28, 2014; and
- (c) Interest on said principal balance from March 1, 2014, at 1.0% per annum until paid. Exhibit 2, ¶ 5.

(*Sec'y Stat.*, ¶ 5; Ex. 2, *Dillon Decl.*, ¶ 5.)

On April 14, 2012, Exhibit A within the original FHA's Home Affordable Modification Program package ("Modification Package"), was sent to Petitioner from Bank of America, N.A. *Sec'y Stat.*, Attachment. More specifically, Exhibit A-1, a *Commitment to Modify Mortgage and for Partial Claim* ("*Commitment to Modify*"), was included within the Modification Package. *Id.* The *Commitment to Modify* states, in part, that Bank of America, N.A. was willing to modify Petitioner's delinquent mortgage and to process a Partial Claim in order to reinstate Petitioner's mortgage and avoid foreclosure. *Id.* The Petitioner agreed to the terms of the *Commitment to Modify* when he signed the Exhibit A-2, the *Acceptance of Commitment*, on April 26, 2012. *Sec'y Stat.*, Attachment.

The terms and conditions of the *Commitment to Modify* state that the mortgage would be modified by reducing the principal balance from \$157,146.39 to \$140,223.09. Additionally, funds would be advanced, in the amount of \$25,959.11 to reinstate the mortgage and bring it current.

## Discussion

In this case, Petitioner claims that he does not owe the debt that is the subject of this proceeding because it was paid in full by his lender. More specifically, Petitioner states:

Please find the payment history and the settlement statement for the loan in question. I have had no luck with getting help with Bank of America. . . . Please review all documents and as I said this money should be coming from Bank of America, not me.

*Petitioner's Hearing Request, (H'rg. Req.),* filed March 28, 2013.

As support, Petitioner provided a copy of a *Settlement Statement ("HUD-1 Statement")* and other documentation. The *HUD-1 Statement* and Bank of America's loan history statement failed to provide sufficient evidence that \$25,959.11 was paid in full to HUD when funds were disbursed from the sale of Petitioner's home. *H'rg Req.*, Attachment. However, the loan history statement that Petitioner provided with his Hearing Request confirmed that the \$25,959.11 advance was credited to Petitioner's debt account in September 2012. The loan history statement also confirmed that the principal balance was reduced to \$140,223.09 in October 2012. Petitioner has failed to provide evidence, beyond the HUD-1 Statement and loan history, that would more sufficiently support his claim that the alleged debt owed on the Partial Claim was paid in full.

The Secretary claims, on the other hand, "the FHA mortgage insurance on the *original* Note and Security Instrument was terminated, as the mortgage indicated the mortgage was paid in full." (emphasis added.) *Sec'y. Stat.*, ¶ 3. The Secretary further states that "pursuant to the terms and conditions of the Subordinate Note, the Petitioner's debt is past due and legally enforceable." *Sec'y. Stat.*, ¶¶ 3-4. The Secretary provides, as support, a copy of the Subordinate Note that shows that the alleged debt becomes due and payable "when the borrower pays the primary Note in full," and such proof exists in this case that the primary Note was "paid in full as of March 28, 2008." *Sec'y. Stat.*, ¶ 2, Ex. 1, Note, ¶ 4(A)(i).

While Petitioner relies on documents from his lender as support that "the Note was either paid or should have been paid by his lender," the Secretary contends that "the documents state clearly that the Note 'is a separate loan through HUD, and is not included in the payoff figures that are provided as payment in full for [the lender's] loan.'" *Sec'y. Stat.*, Ex. 1. The Secretary further states that "Petitioner is the sole borrower of the Note and, by executing the document, acknowledged that he accepted and agreed to the 'terms and covenant contained in [the] Note.'" *Sec'y Stat.*, Ex. 1.

This Court has consistently maintained that foreclosure relief does not relieve the debtor of an obligation to pay the remaining balance on a loan. See Elnora Brevard, HUDBCA No. 07-H-NY-AWG43, (January 17, 2008), citing Marie O. Gaylor, HUDBCA No. 03-D-NY-AWG04 (February 7, 2003); See also, Theresa Russell, HUDBCA No. 87-2776-H301 (March 24, 1988). In short, settlement of a debt with the primary lender does not relieve a debtor of liability to the secondary lender. In this case, Petitioner became legally obligated to pay the alleged debt when Petitioner signed the Note. In order for the Court to find that Petitioner is not legally responsible

for the alleged debt, Petitioner must produce evidence of a release in writing from the secondary lender that show that the lender specifically discharged Petitioner's legal obligation, or produce evidence of valuable consideration that was accepted by the secondary lender from Petitioner as an indication of intent to release. See Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003); Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 1986); Jesus E. and Rita de Los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986). Neither was produced as evidence in this case. Because Petitioner has failed to produce a written release, and failed to provide proof of valuable consideration as a result of foreclosure, the Court finds that Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

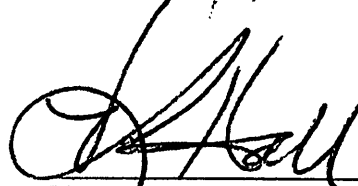
This Court has further maintained that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or unenforceable.” Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Petitioner was ordered by the Court, on three occasions, to produce evidence to prove that the alleged debt was paid in full, or otherwise unenforceable, but Petitioner failed to do so. (See *Notice of Docketing* filed January 6, 2014; *Order for Documentary Evidence* filed February 10, 2014; *Order to Show Cause*, filed March 10, 2014.) Therefore, the Court further finds that Petitioner's claim fails for lack of proof.

### **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**.

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

SO ORDERED,



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Vanessa L. Hall  
Administrative Judge