

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

In the Matter of:

**ALBERT L. SANDERS,**

Petitioner.

15-VH-0008-AO-003

7210034350A

May 8, 2015

**DECISION AND ORDER**

On October 22, 2014, Albert L. Sanders (“Petitioner”) filed a *Hearing Request* concerning the amount, enforceability, or payment schedule of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720A), authorizes federal agencies to use administrative offsets as a mechanism for the collection of debts allegedly owed to the United States government.

**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, 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 October 23, 2014, 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. Petitioner filed documentary evidence on October 27, 2014. *See Petitioner’s Documentary Evidence* (“*Pet’r’s Doc. Evid.*”). On December 16, 2014, the Secretary filed a *Secretary’s Statement*, which included documentation in support of his position. (*Secretary’s Statement* (“*Sec’y Stat.*”) ¶ 2, filed December 16, 2014.) This case is now ripe for review.

**Background**

On or about October 14, 1999, Petitioner executed and delivered to the Secretary a Subordinate Note (“Note”) in the amount of \$11,797.41. *Sec’y Stat.*, ¶ 2. In return, HUD advanced funds to Petitioner’s mortgage lender, thereby allowing Petitioner to avoid foreclosure on his home. *Sec’y Stat.* ¶ 2; Ex. 1, Note. “Paragraph 4 of the Subordinate Note cites specific events which make the debt become due and payable. One of those events is the payment in full

of the primary note, which was insured against default by the Secretary.” *Sec’y Stat.*, ¶ 3; Note, ¶ 4(A)(i), (iii).

On or about December 27, 2000, the “FHA insurance on Petitioner’s primary note was terminated when the lender informed the Secretary that the note was paid in full.” *Sec’y Stat.*, ¶ 4; Ex. B, *Declaration of Brian Dillon*<sup>1</sup> (“*Dillon Decl.*”), ¶ 4. The Subordinate Note was thus due in full at that time. *Sec’y Stat.*, ¶ 5; Note, ¶ 4(B). Petitioner failed to make payment on the Subordinate Note at the place and in the amount as specified. *Sec’y Stat.*, ¶ 6; *Dillon Decl.*, ¶ 4. Consequently, Petitioner’s debt to HUD is delinquent. *Dillon Decl.* ¶ 4.

HUD’s attempts to collect this alleged debt from Petitioner have been unsuccessful. *Sec’y Stat.*, ¶ 7. The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- (a) \$3,686.63 as the unpaid principal balance as of November 30, 2014;
- (b) \$98.32 as the unpaid interest on the principal balance at 4% per annum through November 30, 2013<sup>2</sup>;
- (c) interest on said principal balance from December 1, 2014, at 4% per annum until paid; and
- (d) \$212.76 as the unpaid penalties and administrative fees as of November 30, 2014.

*Sec’y Stat.*, ¶ 7; *Dillon Decl.*, ¶ 5.

On September 23, 2002, HUD’s contractor, First Madison Services, Inc., sent to Petitioner’s last known address a demand for payment on the Subordinate Note. *Sec’y Stat.*, ¶ 8; *Dillon Decl.*, ¶ 6. On February 26, 2007, HUD sent Petitioner another demand letter to the same last known address for Petitioner. *Sec’y Stat.*, ¶ 9; *Dillon Decl.*, ¶ 6. A Notice of Intent to Collect by Treasury Offset also was sent to Petitioner on May 14, 2007. *Id.* On April 1, 2013, the U.S. Department of Treasury applied all of Petitioner’s 2012 federal income tax return, a total of \$4,865, towards the alleged debt.

### Discussion

In this case, Petitioner does not dispute the existence or the amount of the debt, but instead he claims that the subject debt has been paid in full. *Petitioner’s Hearing Request* (“*Hearing Request*”), filed October 22, 2014. More specifically, Petitioner claims that the property that is the subject of the alleged debt, “was sold” and that Petitioner “was of the impression that HUD was paid off during the closing. It was not until after contacting HUD in the year of 2012, we were informed that they were not paid off and this resulted in the withholding of our tax return.” Petitioner finally states that “[w]e are appealing this decision because we feel the debt was paid at closing.” As support, Petitioner submitted copies of a loan payoff letter from GMAC Mortgage Corporation, the Primary Note with Hometrust Mortgage, a loan release letter from Washington Mutual Bank, F.A., and the Subordinate Note between Petitioner and HUD that was signed by Petitioner.

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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> The Court suspects this reference to 2013 is a typographical error. However, it cannot presume to correct this date on the Secretary’s behalf.

The Secretary states, on the other hand, that “the FHA insurance on Petitioner’s primary note was terminated when the lender informed the Secretary that the note was paid in full.” *Sec’y Stat.*, ¶ 4. The Secretary further states that “Upon payment in full of the primary note, Petitioner was required to pay the Subordinate Note in full by delivering payment to HUD at the ‘Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, D.C. 20410’ or any such other place as Lender may designate in writing by notice to Borrower.” *Sec’y Stat.*, ¶ 9. As support, the Secretary submitted copies of the Subordinate Note signed by Petitioner, and a sworn affidavit from the Director of HUD’s Financial Operations Center to substantiate that the alleged debt is due.

After reviewing the record of evidence, the Court is not convinced that Petitioner has been released from his legal obligation to pay in full, or has in fact paid in full, the debt that is the subject of this proceeding. This Court has established that repossession of the collateral by the lender does not relieve a debtor of liability. 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). As such, repossession of a debtor’s home does not release the debtor from an obligation to pay the remaining balance on a loan.

The Secretary’s right to collect the alleged debt in this case emanates from the terms of the Subordinate Note. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). “[I]f satisfaction of a senior deed of trust prevents a junior trust holder from enforcing a junior trust deed on the same real property, the junior trust holder may collect the debt, now unsecured, by initiating collection efforts based on the obligations in the loan note.” Mitchell and Rosalva Fraijo, HUDBCA No. 99-C-CH-Y200 at 3 (March 20, 2000); John Bilotta, HUDBCA No. 99-A-CH-Y258 (December 29, 1999) (citing Kimberly S. (King) Thede, HUDBCA No. 89-4587-L74 (April 23, 1990)). Petitioner became legally obligated to pay the debt when he signed the Subordinate Note. In this case HUD, as the junior trust holder, may initiate collection efforts in accordance with the terms of the Subordinate Note because the primary Note has been paid in full.

For Petitioner not to be held liable for the alleged debt, he must produce evidence of either (1) a written release from HUD specifically discharging Petitioner’s obligation for payment of the alleged debt; or (2) evidence of valid or valuable consideration paid to HUD that released Petitioner from his obligation, or was accepted by the lender with the intent to release Petitioner from his legal obligation. Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); William Holland, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); Ann Zamir (Schultz), HUDBCA No. 99-A-NY-Y155 (October 4, 1999); Valerie L. Karpanai, HUDBCA No. 87-2518-H51 (January 27, 1988); Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); and Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986).

Petitioner has failed, in this case, to produce evidence of a written release that discharges Petitioner for the debt associated with the Subordinate Note. He also has failed to produce evidence of valuable consideration paid to HUD in satisfaction of the alleged debt that would thus render the alleged debt unenforceable. Moreover, the loan numbers referenced in the payoff

letters submitted by Petitioner from GMAC Mortgage and Washington Mutual do not correspond with the FHA loan number associated with the debt in this case. The limited evidence presented by Petitioner lacks credibility and makes it difficult for the Court to establish with certainty whether Petitioner's claim is valid. As a result, the Court finds that, without evidence to refute or rebut the evidence presented by the Secretary, Petitioner's claim fails for lack of sufficient proof.

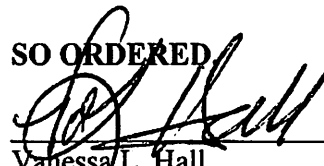
**ORDER**

Based on the foregoing, Petitioner remains legally obligated to pay the alleged debt in the amount so claimed by the Secretary.

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 obligation by means of administrative offset in the amount so claimed by the Secretary.

**SO ORDERED**



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Vanessa L. Hall  
Administrative Judge

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**Review of determination by hearing officers.** A motion for reconsideration of this Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.