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

In the Matter of: **Catherine Ehninger,** Petitioner.	15-VH-0041-AO-012 7-807698050B October 24, 2016

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* (*"Hr'g. Req."*) filed by Catherine Ehninger ("Petitioner"), on February 10, 2015, concerning the existence, amount, or enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary").

Pursuant to 24 C.F.R. § 17.81(a), on February 20, 2015, the Court stayed the issuance of an administrative offset of any federal payment due to Petitioner until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing").* Petitioner filed a *Statement* (*"Pet'r. Statement"*), along with documentary evidence, on March 4, 2015. On April 17, 2015, the Secretary filed a *Secretary's Statement*, which included documentation in support of his position. *Secretary's Statement ("Sec'y Statement").* This case is now ripe for review.

JURISDICTION

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 *et seq.* The administrative judges of this Court, in accordance with the procedures set forth in 24 C.F.R. §§ 17.69 and 17.73, have been designated to conduct a hearing to determine, by a preponderance of the evidence, whether the alleged debt is past due and legally enforceable.

BACKGROUND

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720A, as a result of a defaulted loan that was insured against non-payment by the Secretary. The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720A), authorizes federal agencies to use administrative offset as a mechanism for the collection of debts allegedly owed to the United States government.

On or about April 27, 2011, Petitioner executed and delivered a Home Improvement Retail Installment Contract ("Note") with Stealth Solar, LLC[1], ("Stealth Solar") in the amount of $11,520.00. *Sec'y Statement,* Ex. 1, *Note.* The *Note* was executed for the installment of an energy saving component in Petitioner's home. *Pet'r Statement.* Stealth Solar assigned the *Note* and its rights to Service Finance Company, LLC, ("Service Finance") on June 1, 2011. *Sec'y Statement,* Ex. 1, *Allonge.* Thereafter, Service Finance assigned the *Note* to U.S. Bank National Association, effective on March 3, 2012. *Sec'y Statement,* Ex. 1, *Allonge.* After default by Petitioner on March 27, 2014, the *Note* was assigned to HUD on or about October 31, 2014, under the regulations governing the Title I Insurance Program. *Sec'y Statement, ¶ 3;* Ex. 2, *Declaration of Brian Dillon[2] ("Dillon Decl."), ¶ 3.*

HUD's attempts to collect this alleged debt from Petitioner have been unsuccessful. *Sec'y Statement, ¶ 3;* Ex. 2 *¶ 3.* The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

a) $10,807.56 as the unpaid principal balance as of February 28, 2015;
b) $321.79 as the unpaid interest on the principal balance at 1 % per annum through February 28, 2015;
c) $703.09 as the unpaid penalties and administrative costs as of February 28, 2015; and
d) interest on said principal balance from March 1, 2015, at 1 % per annum until paid.

Sec'y Statement, ¶ 3; Dillon Decl., ¶ 4.

On February 2, 2015, a *Notice of Intent to Collect by Treasury Offset* ("Notice") was mailed to Petitioner. *Sec'y Statement, ¶ 3; Dillon Decl., ¶ 5.*

DISCUSSION

Petitioner does not dispute the existence or the amount of the debt. The issues that remain for the Court's consideration are Petitioner's claims that (i) the subject debt should be forgiven because the loan was executed to install a fraudulent energy saving component; and, (ii) administrative offset would cause significant financial hardship to Petitioner.

Petitioner, in her *Statement,* asks the Court to forgive her obligation to pay the subject debt because the *Note* was executed pursuant to a fraudulent scheme. Petitioner introduced the Stipulated Consent Judgment from the State of Arizona case against Stealth Solar and Mr. Richie, providing documentation of Mr. Richie's plea deal and fraudulent charges.[3] *Pet'r Statement.*

---

[1] The Attorney General of Arizona filed a complaint against Stealth Solar, LLC, and its owner, Fred Richie, for violations of the Arizona Consumer Fraud Act. On January 21, 2015, the Court entered a Consent Judgment, requiring Mr. Richie to pay consumer restitution and civil penalties. Petitioner was among 50 complainants.

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

[3] Mr. Richie was ordered to pay restitution and civil penalties, however the Assistant Attorney General of Arizona notified Petitioner that Mr. Richie was insolvent and filed bankruptcy. *Pet'r. Statement.*

In response, the Secretary asserts that Petitioner is still obligated to repay the amount owed on the *Note*. *Sec'y. Statement* ¶ 7. The Secretary references the *Completion Certificate*, signed by Petitioner, in which it states: "Where documents signed by Petitioner place all workmanship related risks on the debtor rather than the creditor, Petitioner's redress for grievances are against his/her contractors." Jess High, HUDBCA No. 87-2663-H192 (Jan. 29, 1998). *Sec'y. Statement* ¶ 7.

The record in this case is straightforward. Both parties agree that the subject debt exists. Petitioner however contends that the Court should consider her equitable argument and forgive the debt. *Pet'r. Statement.* The Court first notes that determination to forgive a debt is beyond the scope of this Court's jurisdiction. By regulation, this Court is only authorized to determine whether, as a matter of law, this debt is past due and legally enforceable against Petitioner. See 24 C.F.R. § 17.152. In other words, equitable arguments, as presented by Petitioner, are not matters to be considered by this Court.[4]

The Secretary is correct that once Petitioner signed the *Completion Certificate* on May 26, 2011, Petitioner effectively relieved HUD of any responsibility it may have had to redress the grievances of Petitioner. The *Completion Certificate* for the Property Improvements expressly states at Paragraph 4 of the "Notice to Borrowers: I(We) understanding that the selection of the dealer or contractor and the acceptance of the materials used and the work performed is my (our) responsibility, and HUD does not guarantee the quality or workmanship of the property improvements." (Emphasis supplied.) The language clearly defines who guaranteed all workmanship related risks, Stealth Solar. Consequently, it is against Stealth Solar that Petitioner's grievances regarding workmanship should be raised.

The Court also reviewed the *Note* and discovered that HUD was never a party to the *Note,* despite being the insurer against non-payment of the debt that is the subject of the *Note.* Darold W. Nelson, HUDBCA No. 88-2871-H395 (Dec. 31, 1987). Furthermore, the record does not reflect any proof that Petitioner was issued a written release from her contractual obligation to pay the alleged debt or proof that Petitioner paid valuable consideration in satisfaction of the alleged debt. The cause of action against Stealth Solar presented by Petitioner to the Court is irrelevant as it relates to this debt collection. It neither proves Petitioner was released from her contractual obligation directly with HUD nor proves that the alleged debt is unenforceable. Absent a showing that Petitioner was released by HUD from his contractual obligation, or proof that Petitioner paid in full the alleged debt, HUD is not barred from seeking collection of the alleged debt by means of administrative offset.

As a final point, Petitioner claims that the subject debt is unenforceable because the proposed offset would create financial hardship for her. Petitioner more specifically states, "each month we are in the Red an additional $200 and we have cut all desirable expenses out

---

[4] See In the Matter of: Jennifer M. Smith, HUDALJ 11-F-044-AO/1 (August 30 2011) (The statutes and regulations governing salary offsets by the federal government do not permit this Court to consider and resolve such an issue [of equity]); Appeal of All South Properties Inc., HUDBCA Nos. 92-G-7604, 93-G-C5 (October 17, 1997)(This Board lacks jurisdiction to grant equitable relief based upon any theory of quantum meruit, a contract implied-in-law, or unjust enrichment).

already." *Pet'r. 10/17/16 Letter.* Petitioner introduced, as evidence of her claim of financial hardship, a spreadsheet of monthly expenses that included utility payments, mortgage payments, automobile expenses, medical expenses and other household expenses. *Pet'r. Statement.* Petitioner also included her monthly Social Security benefits. *Pet'r. Statement.*

While the Secretary did not address Petitioner's claim of financial hardship in his *Statement*, it is worth noting. Unfortunately, evidence of hardship, no matter how compelling, "cannot be taken into consideration in determining whether the debt is past-due or legally enforceable." Charles Lomax, HUDBCA No. 87-2357-G679 (Feb. 3, 1987). Anna Filiziana, HUDBCA No. 95-A-NY-T11 (May 21, 1996). No regulation or statute currently allows financial hardship to be considered as a basis for determining whether a debt is unenforceable in administrative offset cases. As a result, financial hardship is not a factor that the Court may consider when determining the enforceability or validity of a debt owed in such cases. See Hedieh Rezai, HUDBCA No. 04-A-NY-EE016 (May 10, 2004) (finding financial hardship is not a valid defense in administrative offset proceedings); Raymond Kovalski, HUDBCA No. 87-1681-G18 (Dec. 8, 1986) (stating, "financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it").

Consistent with case law precedent and statutory limitations, the Court finds that financial hardship cannot be considered as a defense against the payment of the debt owed by Petitioner herein because the subject debt is being collected by means of administrative offset. The Court is only authorized to determine whether, as a matter of law, this debt is past due and legally enforceable against Petitioner. 24 C.F.R. § 17.152.

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 in 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.

Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. A motion for reconsideration of the Court's written decision, specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 30 days of the date of the written decision, and shall be granted only upon a showing of good cause.