

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

In the Matter of:

**Sheila A. Emmons O'Rourke**

Petitioner.

HUDOHA 15-VH-0081-AO-018

Claim No. 72-1007893 OA

June 23, 2016

**DECISION AND ORDER**

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* (Hr'g Req.) filed by Petitioner Sheila A. Emmons O'Rourke ("Petitioner"), on June 16, 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 June 17, 2015, the 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) at 2. Petitioner filed a *Statement (Pet'r. Statement)*, along with documentary evidence, on August 19, 2015. On February 4, 2016, the Secretary filed a *Secretary's Statement*, which included documentation in support of his position. *Secretary's Statement ("Sec'y Stat.")*. 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 at 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 offsets as a mechanism for the collection of debts allegedly owed to the United States government.

On or about January 26, 2012, Petitioner executed and delivered to the Secretary a Subordinate Note (“Note”) in the amount of \$22,947.39. *Sec’y. Stat.*, ¶ 2. In return, as a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner’s FHA insured mortgage lender to bring Petitioner’s primary mortgage current. *Sec’y Stat.*, ¶ 3; Ex. 1, Note. Paragraph 4 of the Subordinate Note cites specific events that 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.*; Note ¶ 4 (A)(i), (iii).

On or about October 6, 2014, the “FHA mortgage insurance on Petitioner’s primary mortgage was terminated, as the lender indicated the mortgage 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.*, ¶ 4; Note ¶ 4; *Dillon Decl.* ¶ 4. Petitioner failed to make payment on the Subordinate Note at the place and in the amount specified. *Sec’y. Stat.*, ¶ 5; *Dillon Decl.*, ¶ 5. 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.*, ¶ 6. The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- a) \$22,947.39 as the unpaid principle balance as of December 30,2015;
- b) \$191.20 as the unpaid interest on the principal balance at 1% per annum through December 30, 2015;
- c) \$1,416.76 as unpaid penalties and administrative costs through December 30, 2015; and
- d) interest on said principal balance from January 1, 2016 at 1% per annum until paid.

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

On May 25, 2015 a Notice of Intent to Collect by Treasury Offset was mailed to Petitioner. *Sec’y. Stat.*, ¶ 7; *Dillon Decl.*, ¶ 6.

## DISCUSSION

Petitioner, in her *Statement*, initially questioned the existence of this debt to HUD. She stated, “I received this [Notice of Intent], and I am unaware of any debt with HUD.” *Hr’g Req.* at 3. However, Petitioner later admitted, “it would appear that this debt is possibly valid.” *Pet’r.*

---

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

*Statement* at 1. Petitioner also acknowledged that the payoff of the Primary Note with Bank of America, which triggered the Subordinate Note becoming due and payable, occurred when she sold the property in question. *Id.* As a result, the Court concludes that Petitioner no longer disputes the existence or the amount of the debt.

The only issue that remains for the Court's consideration is Petitioner's claim that the subject debt is unenforceable because the proposed offset amount would create a financial hardship for her. Petitioner states, "I am asking for any consideration if there is any forgiveness in this debt, or any part of it[;] Or any consideration to my circumstances with regards to paying this debt." *Pet'r. Statement* at 2. Petitioner introduced, as evidence of her claim of financial hardship, copies of her income tax returns and a caregiver agreement that included arrangements for someone to assist Petitioner's mother with her age-related health concerns.

In response, the Secretary states that "Petitioner has the burden of producing evidence which demonstrates that the claimed debt is not past-due or legally enforceable, and here Petitioner has not met that burden." *Sec'y. Statement* at ¶ 8. The Secretary acknowledges Petitioner's claim of hardship but adds that "unfortunately, evidence of hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past-due or enforceable." Charles Lomax, HUDBCA No. 87-2357-G679 (Feb. 3, 1987).

The record in this case is straightforward; both parties agree that the subject debt exists and that Petitioner's financial circumstances are dire. However, 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, the Secretary is correct that 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) (financial hardship is not a valid defense in administrative offset proceedings); Raymond Kovalski, HUDBCA No. 87-1681-G18 (Dec. 8, 1986) ("Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it."). Thus, consistent with case law precedent and statutory limitations, the Court finds that financial hardship cannot be considered a defense against the payment of the debt owed by Petitioner herein because the subject debt is being collected by means of administrative offset.

Finally, the Court cannot grant Petitioner's request for "forgiveness in this debt or any part of it..." This Court is not authorized to extend, recommend, or accept a payment plan or settlement offer on behalf of the Department. Petitioner may wish to discuss this matter with Michael DeMarco, Director, HUD Albany Financial Operations Center, (518) 862- 2859, 52 Corporate Circle, Albany, NY 12203-5121. Petitioner may also request a review of her financial status by submitting to that HUD Office a Title I Financial Statement (HUD Form 56142).

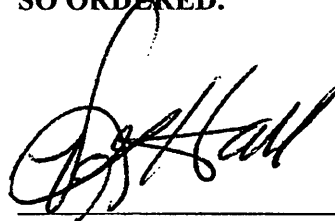
**ORDER**

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.**

A handwritten signature in black ink, appearing to read "V. Hall", written over a horizontal line.

Vanessa L. Hall  
Administrative Judge

**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 30 days of the date of the written decision, and shall be granted only upon a showing of good cause.