

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

In the Matter of:

JANETT D. BEATTY,

Petitioner.

16-AM-0004-AO-001

7-210080220A

January 26, 2017

RULING AND ORDER OF DISMISSAL

Petitioner filed her initial Hearing Request in this case on or about October 6, 2015. A *Notice of Docketing, Order, and Stay of Referral*, was then entered in this case on October 7, 2015, ordering Petitioner to file documentary evidence in support of her appeal on or before November 7, 2015. Petitioner sought to comply with the Court's Order by filing a letter, dated November 6, 2015, which is deemed to be *Petitioner's Motion to Dismiss*. That motion contained largely procedural arguments and did not provide "documentary evidence in support of Petitioner's position," as required by the *Notice of Docketing*.

On November 19, 2015, Petitioner filed a computer print-out entitled "Customer Account Activity Statement," detailing mortgage payments and fees paid by Petitioner during the period January 2013 to December 2014. However, Petitioner has failed to show that that Customer Account Activity Statement for Loan No. 0243674876 relates, in any way, to the debt claimed by the Secretary in this case. Without such a showing, the Court is unable to determine that the account statement is relevant and can, therefore, be properly considered as documentary evidence in this case.

Notwithstanding this deficiency, the Court ordered the Secretary to file the *Secretary's Statement*, which the Secretary filed on February 9, 2016. There, the Secretary pointed out that the Customer Account Activity Statement filed by Petitioner did not relate to the time periods relied on by the Secretary to prove that Petitioner was indebted to the Department. The Secretary stated that "Petitioner was in default at various points throughout 2011 and 2012, which resulted in her execution of the Subordinate Note and Subordinate Security Deed in favor of HUD in March 2012." *Secretary's Statement*, ¶23. Again, the statement provided by Petitioner covered the period January 2013 to December 2014.

The Customer Account Activity Statement also does not purport to show payments Petitioner may have made to HUD after November 2014, when the March 2012 Subordinate Note to HUD at issue in this case became due by virtue of Petitioner's sale of her home in November 2014. Petitioner does not deny that she sold her home or that she paid off the underlying mortgage. The terms of the March 2012 Subordinate Note, expressly provide that she therefore became obligated to immediately repay the full balance of the Note. *Secretary's Statement*, Exhibit B, Subordinate Note, ¶4(I)(1).

On February 25, 2016, Petitioner was provided with an additional opportunity to file documentary evidence on her behalf. Petitioner then filed *Petitioner's Statement that Motion to Dismiss is Valid and in Opposition to Secretary's Statement of February 9, 2016*, on March 22, 2016 ("*Pet's March 22 Statement*".) Unfortunately, *Pet's March 22 Statement* also failed to provide documentary evidence or other substantive basis for refuting the Secretary's claims. The Court denied *Petitioner's Motion to Dismiss* on October 3, 2016, and allowed both parties until October 21, 2016 to file further documentary evidence in the case.

With no additional documentary evidence having been filed by either party, the Court issued a *Show Cause Order* on December 13, 2016 that ordered Petitioner to show cause, on or before January 9, 2017, as to why her Request for Hearing should not be dismissed for failure to file documentary evidence in this case. The *Show Cause Order* expressly provided that: "Failure to comply with this Order shall result in the imposition of sanctions to include entry of judgment in favor of the Secretary in this case, a decision based on the documents of record, or other sanctions deemed necessary and appropriate by the Administrative Judge." (emphasis in original). Petitioner failed to comply with this Order. Accordingly, upon consideration of the entire record in this case, and pursuant to 24 C.F.R. 26.2(c), it is

ORDERED, *sua sponte*, that Petitioner's appeal is hereby DISMISSED, *without prejudice*. The *stay of proceedings* previously entered in this case on October 7, 2015, is hereby VACATED.

SO ORDERED,



H. Alexander Manuel
Administrative Judge