

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

In the Matter of:

Juliet C. Gilbert,

Petitioner.

16-AM-0116-AO-019

7210084250A

July 24, 2017

DECISION AND ORDER

On May 31, 2016, Juliet C. Gilbert (“Petitioner”) was notified that, pursuant to 31 U.S.C. § 3711(f) and 24 C.F.R. § 17.76, that she owed money to the Department of Housing and Urban Development (“HUD” or “The Secretary”). On July 4, 2016, petitioner was notified that HUD intended to collect the debt using the Treasury Offset program.

On July 21, Petitioner requested a hearing challenging the existence of the debt. The Office of Hearings and Appeals has been designated to determine whether the debt is legally enforceable. 24 C.F.R. § 17.69(c). As a result of Petitioner’s hearing request, the debt collection was temporarily stayed by the Court on July 22, 2016. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”) dated July 22, 2016).

The Housing and Urban Development Office of Hearings and Appeals has jurisdiction pursuant to the provisions of the Deficit Reduction Act of 1984 (31 U.S.C. § 3716) and the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3720) in addition to Departmental regulations.

Background

On April 29, 2009, Petitioner executed and delivered to the Secretary a Partial Claim Promissory Note (“Note”) to the Secretary in the amount of \$7,305.84. (*Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable*, “Sec’y. Stat.” dated October 21, 2016). The Note was in consideration of HUD advancing funds to the Petitioner’s primary mortgage lender, Wells Fargo, to prevent foreclosure of her home.

In May 2015, Petitioner decided to sell her home. She was referred to the First American Title Insurance Company (“First American”). First American contacted Wells Fargo regarding mortgage payoff for the house. (Petitioner’s Affidavit, p. 1 ¶ 3 (filed August 29, 2016).) Petitioner was informed by an escrow officer at First American that both the primary deed of trust and the subordinate deed of trust were both paid off upon sale of the home. *Id.* at p. 2 ¶ 8).

The subordinate Note states that, upon “paying in full all amounts of the primary Note, related mortgage, and deed of trust...insured by the Secretary, payment of the HUD loan shall begin”. (Sec’y Stat. p. 1 ¶ 4.) Because the first mortgage was paid in full, HUD attempted to collect the amount due under the Note by sending Petitioner a Notice of Disclosure of Debt to Consumer Reporting Agency (Petitioner’s Affidavit, p. 1 ¶ 5.)

The Secretary alleges that Petitioner owes HUD the following amounts:

- a. \$7,305.84 as the unpaid principal balance as of September 30, 2016
- b. \$24.36 as the unpaid interest on the principal balance at 1% per annum through September 30, 2016
- c. \$475.14 as the unpaid Penalties and Administrative Costs, and
- d. Interest on said principal balance from October 1, 2016 at 1% per annum until paid

(Sec’y Stat., p. 1 ¶ 5).

On July 4, 2016, Petitioner received from the Secretary a Notice of Intent to Collect by Treasury Offset. Petitioner then requested a hearing to dispute the debt.

Discussion

Petitioner believes she does not owe any debt to HUD. Petitioner contends that the payoff during the sale of her house paid off both the original mortgage and subordinate Note from HUD. (Petitioner’s Affidavit, filed August 29, 2016.) When asked, Heather MacLeod, Senior Escrow Officer at First American informed her via email that they had spoken with Wells Fargo. Id., p. 2 at ¶ 8. Wells Fargo allegedly told First American that the payoff was for both the original and the subordinate loan. Id. Wells Fargo is further alleged to have informed First American that because Petitioner paid off the first loan, she was released from both Deeds of Trust. Id. at 10. Petitioner did not receive any verification that this correspondence occurred. Id. at 8.

Petitioner’s argument fails on two counts. First, no evidence was produced by Petitioner to prove that by paying off the original mortgage, she was also paying off her subordinate Note with HUD. Moreover, the Secretary produced evidence that shows that the mortgage payoff did not include the payoff of funds owed to HUD. (Sec’y Stat., p. 2 ¶ 8.) When Petitioner signed the promissory note agreeing to pay back HUD for foreclosure avoidance, this created an agreement between the Secretary and Petitioner. Wells Fargo was not mentioned as a lender on the subordinate Note, nor were they party to the agreement between HUD and Petitioner. See Cydnie A. Taylor, HUDOA No. 7-21007690A (October 22, 2014).

The duty of Petitioner to pay back what she owed to HUD is defined by the terms of the note. See Cydnie A. Taylor, HUDOA No. 7-21007690A (October 22, 2014). Since the terms of the subordinate Note required Petitioner to begin payment upon the payoff of the primary mortgage, the Secretary properly informed Petitioner that HUD intended to collect. (Sec’y Stat. p. 1 ¶ 4).

Petitioner provided to the Court a confirmation of loan payoff from Wells Fargo. (*Confirmation of Loan Payoff*, dated June 15, 2015). This confirmation only proves that Petitioner is no longer indebted to the original lender, Wells Fargo. *Id.* Petitioner was not released from her duty to pay back HUD when her debt to Wells Fargo was paid off. Therefore, the Court finds that Petitioner remains indebted to HUD.

Second, it is not persuasive that Petitioner was told the mortgage payoff included funds owed to HUD. The evidence provided by Petitioner indicates that there was miscommunication on the matter of whether HUD was paid back for the second Deed of Trust. Petitioner provided an email correspondence between herself and her Escrow Officer at First American. (Petitioner's Affidavit, p. 2 ¶ 8.) The Escrow Officer told her that one payoff statement paid off the two Deeds of Trust. *Id.*

The obligation to repay HUD for the subordinate Note, or second Deed of Trust, rested on Petitioner, not on Wells Fargo. The vague information provided by First American does not indicate that Wells Fargo paid the amount due on the subordinate note to HUD. It is conceded that Petitioner was told via email by the Escrow Officer that the mortgage "paid off both deeds of trust". However, no evidence was documented to show that HUD received any funds from the payoff. Indeed, it was quite the contrary. The Secretary provided evidence that indicates that HUD did not receive payment from Petitioner or her primary lender. (Sec'y Stat. p. 2 ¶ 8.) Petitioner failed to prove that the information given to her from First American was more than a misunderstanding between the two.


Petitioner has only shown that the primary mortgage with Wells Fargo was paid off. She has not shown that HUD received any funds from Wells Fargo during the payoff. Therefore, the Petitioner remains indebted to HUD in the amounts claimed by the Secretary.

ORDER

Based on the foregoing, the *Order* imposing the stay of referral of this matter to the U.S. Department of Treasury is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative offset of any federal payment due Petitioner.

SO ORDERED,



H. Alexander Manuel
Administrative Judge