

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

In the Matter of:

Lindsey D. Pitts,

Petitioner.

16-VH-0018-AO-004

780778434-0B

November 14, 2016

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* (“*Hr’g. Req.*”) filed by Lindsey D. Pitts (“Petitioner,”) on December 8, 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 December 9, 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*”). Counsel for Petitioner filed a *Statement* along with documentary evidence on February 25, 2016. *Petitioner’s Statement* (“*Pet’r. Stat.*”). On April 5, 2016, the Secretary filed a *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 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 September 6, 2007, Petitioner executed and delivered to Southern Colonel Homes, Inc., a Retail Installment Contract – Security Agreement (“*Note*”) in the amount of

\$40,156.60. *Sec'y. Stat.*, ¶ 2; Ex. A, *Note*. The *Note* was executed for the purchase of a manufactured mobile home. *Sec'y. Stat.* Southern Colonel Homes, Inc. assigned the *Note* and its rights to 21st Mortgage Corporation on September 6, 2007. *Sec'y. Stat.*, ¶ 3; Ex. A at 4. Thereafter, 21st Mortgage Corporation assigned the *Note* to Vanderbilt Mortgage and Finance Inc. *Sec'y. Stat.*, ¶ 4; Ex. B. After default by Petitioner, the *Note* was assigned to HUD under the regulations governing the Title I Insurance Program. *Sec'y. Stat.*, ¶ 5; Ex. C, *Declaration of Brian Dillon*¹ ("*Dillon Decl.*"), ¶ 3.

HUD's attempts to collect this alleged debt from Petitioner have been unsuccessful. *Sec'y. Stat.*, ¶ 6; *Dillon Decl.*, ¶ 4. The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- a) \$14,498.38 as the unpaid principal balance as of February 29, 2016;
- b) \$631.51 as the unpaid interest on the principal balance at 1 % per annum through February 29, 2016;
- c) \$942.40 as the unpaid penalties and administrative costs as of February 29, 2016; and
- d) interest on said principal balance from March 1, 2016, at 1 % per annum until paid.

Sec'y. Stat., ¶ 6; *Dillon Decl.*, ¶ 4.

On November 9, 2015, a *Notice of Intent to Collect by Treasury Offset* ("*Notice*") was mailed to Petitioner. *Sec'y. Stat.*, ¶ 7; *Dillon Decl.*, ¶ 8.

DISCUSSION

Petitioner does not dispute the existence or the amount of the debt. Instead, Petitioner claims that she is not responsible for the subject debt because she was relieved of her obligation to pay pursuant to the terms of a *Child Custody and Property Settlement Agreement* ("*Settlement Agreement*"). *Pet'r. Stat.*

Petitioner, in her *Statement*, claims that her former husband, James Homer Pitts, is solely responsible to repay the debt. *Pet'r Stat.*, ¶ 1. As support, Petitioner provided a copy of the *Settlement Agreement* and *Judgment of Divorce* in which it specifically states "husband [James Homer Pitts] shall be solely responsible for the payment of the outstanding indebtedness owing to Vanderbilt Mortgage and Finance, Inc." *Pet'r Stat.*, ¶ 1; Ex. A, ¶ 12.

In response, the Secretary states that Petitioner "remains liable for the entire indebtedness, despite her now ex-husband's obligation to also repay the debt." *Sec'y. Stat.*, ¶ 8. The Secretary further explains that as co-signers on the *Note*, "Petitioner and her ex-husband are jointly and severally liable for repayment of the entire indebtedness." *Sec'y. Stat.*, ¶ 9.

For Petitioner not to be held liable for the full amount of the debt, there must be either a release in writing from the former lender explicitly relieving Petitioner's obligation, "or valuable consideration accepted by the lender" indicating intent to release. Cecil F. and Lucille Overby,

¹ Brian Dillon is the Director of the Asset Recovery Division of HUD's Financial Operations Center.

HUDBCA No. 87-1917-G250 (Dec. 22, 1986). In this case, Petitioner is jointly and severally liable with her former husband for repayment of the debt according to the terms of the *Note*, and as such, the Secretary may proceed against any co-signer for the full amount of the debt. Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (Jan. 30, 2003). The *Settlement Agreement* herein only determined the rights and liabilities between Petitioner and her former husband, but not the rights and liabilities between Petitioner and third parties. Kimberly S. King (Thiede), HUDBCA No. 89-4587-L74 (April 23, 1990). Such a document purporting to release Petitioner from her joint-obligation under the *Settlement Agreement* does not affect the claims of an existing creditor unless the creditor was a party to the action. Janet T. Rodocker, HUDBCA No. 00-A-CH-AA17 (May 22, 2000).

In addition, Petitioner has failed to produce evidence of a written release from her obligation to pay the alleged debt, or evidence of valuable consideration paid to HUD in satisfaction of the debt, sufficient enough to render the alleged debt unenforceable. While the Petitioner may be divorced from her ex-spouse, neither the Secretary nor the lender was a party to the divorce action. So as a recourse, Petitioner may seek to enforce, in the state or local court, the divorce decree that was granted against her ex-spouse so that Petitioner may recover from her ex-spouse monies she paid to HUD in order to satisfy this legal obligation. See William Holland, HUDBCA No. 00-A-NY-AA83 (Oct. 12, 2000); Michael York, HUDBCA No. 09-H-CH-AWG36, dated June 26, 2009, at 3. In the meantime, without proof of a written release, I find that Petitioner remains legally obligated to pay the subject debt as a co-signor on the *Note*.

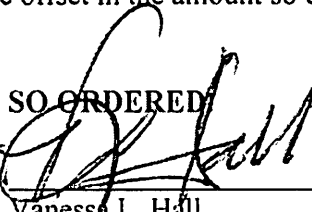
ORDER

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.