

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

In the Matter of:

**Devon L. Bierner**

Petitioner.

16-VH-0051-AO-006

7-210081580A

July 24, 2017

**DECISION AND ORDER**

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* (“*Hr’g. Req.*”), and documentary evidence, filed by Devon L. Bierner (“Petitioner”), on February 18, 2016, 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 22, 2016, the Court stayed the issuance of a treasury offset order due to Petitioner until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral* (“*Notice of Docketing*”). After a series of extensions and status reports of ongoing settlement negotiations between the parties, Petitioner informed the Court, on October 5, 2016, that the settlement negotiation efforts were unsuccessful. *See Orders Granting Extension of Time* dated April 25, 2016, May 20, 2016, and August 31, 2016; *Order for Status Report* dated September 19, 2016; and *Petitioner’s Status Report* filed October 5, 2016.

In response to the Court’s *Order* to the Secretary on May 23, 2017, the Secretary filed his *Statement* which included documentation in support of his position. *Secretary’s Statement* (“*Sec’y. Stat.*”) filed June 22, 2017. 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 treasury offset as a mechanism for the collection of debts allegedly owed to the United States government.

On or about August 31, 2004, Petitioner, Devon L. Bierner executed and delivered a Subordinate Note (“Note”) to the Secretary in the amount of \$5,732.23. *Sec’y. Stat.*, ¶ 2. HUD advanced funds to Petitioner’s FHA insured mortgage lender as a means of providing foreclosure relief to Petitioner.<sup>1</sup> *Sec’y. Stat.*, ¶ 3. In exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec’y. Stat.*, ¶ 3; *Ex. 2, Declaration of Brian Dillon*<sup>2</sup> (“*Dillon Decl.*”), ¶ 4. On or about February 13, 2015, the primary note and mortgage was paid in full, and the FHA mortgage insurance on the primary note was terminated. *Sec’y. Stat.*, ¶ 5; *Dillon Decl.*, ¶ 4. Because the primary note and mortgage was paid in full, and the FHA mortgage insurance was terminated, the Note became immediately due and payable, pursuant to the terms of the Note. *Sec’y. Stat.*; *Ex. 2, Note*.

HUD’s attempts to collect this alleged debt from Petitioner have been unsuccessful. *Sec’y. Stat.*, ¶ 6; *Dillon Decl.*, ¶¶ 5, and 6. The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- a) \$2,235.72 as the unpaid principal balance as of April 30, 2017;
- b) \$24.18 as the unpaid interest on the principal balance at 1 % per annum through April 30, 2017;
- c) \$276.81 as the unpaid penalties and administrative costs as of April 30, 2017; and
- d) interest on said principal balance from May 1, 2017 at 1 % per annum until paid.

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

On January 18, 2016, a *Notice of Intent to Collect by Treasury Offset* (“*Notice*”) was mailed to Petitioner. *Sec’y. Stat.*, ¶ 8; *Dillon Decl.*, ¶ 6.

## DISCUSSION

Petitioner disputes the existence and enforceability of the debt alleged by the Secretary. Petitioner claims that the debt may not be owed because it was her understanding that “everything was covered correctly at the point of sale” (implying that the subject debt was satisfied in April 2005 at the sale/settlement of the property that is the subject of the Note). *Hr’g Req.*, filed February 18, 2016. As support, Petitioner introduced into evidence an “Assumption Agreement With Release of Liability” dated April 20, 2005, in which Petitioner purported to transfer the remainder of her home mortgage to a third party. Petitioner also introduced into evidence a “Warranty Deed” conveying title of the subject property to a third party.

In response to Petitioner’s claim, the Secretary contends that full payment of the subject debt was never received and that Petitioner remains contractually obligated to pay the debt so claimed. The Secretary further contends that “the FHA mortgage insurance on the primary

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<sup>1</sup> Petitioner’s FHA insured mortgage lender was the holder of Petitioner’s primary mortgage note (“*primary note*”).

<sup>2</sup> Brian Dillon is the Director of the Asset Recovery Division of HUD’s Financial Operations Center.

mortgage was terminated, as the lender indicated the primary note and mortgage was paid in full.” See *Sec’y. Stat.*, Ex. 2, ¶ 4(A)(i). Upon termination, the amount alleged became due and payable yet was not paid by Petitioner. The Secretary introduced into evidence copies of a sworn affidavit from the Acting Director of HUD’s Asset Recovery Division and of the subject Note bearing Petitioner’s signature. Pursuant to the Note, Petitioner agreed to pay the alleged debt when it became due and payable. In addition, the Note included specific instructions on how and where payment should be made to the Secretary, and those instructions were unambiguous.

For Petitioner to prove that a debt owed to the Secretary has been satisfied, there either must be a written release from HUD or evidence of valuable consideration accepted by HUD from Petitioner. See Hedieh Rezai, HUDBCA No. 04-A-NYEE016 (May 10, 2004). To date, Petitioner has not provided sufficient evidence that she complied with the specific repayment terms in the Note either with valuable consideration or with a written release. The assumption agreement and warranty deed also provided by Petitioner did not reflect full payment of the subject debt. This evidence, standing alone, proves to be insufficient as support for Petitioner’s argument that the subject debt is unenforceable. Therefore, Petitioner has failed to meet her burden of proof and remains indebted to HUD for the amount so claimed by the Secretary.

Based on the record of evidence, the Court finds that Petitioner’s claim fails for lack of sufficient proof.

**ORDER**

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

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of treasury offset for the amount indicated 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.