

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

In the Matter of:

Christopher McCook,

Petitioner.

16-VH-0099-AO-012
1600015920A

May 23, 2017

ORDER OF DISMISSAL

Title 24 of the Code of Federal Regulations, Section 17.69 (b) provides that failure by the Petitioner to submit evidence within 60 calendar days from the date of the Department's Notice of Intent will result in a dismissal of Petitioner's request for review by the Court.

On October 12, 2016, in Petitioner's *Response to NOD*, he acknowledged that over two years ago he had received notice of the subject debt in January 2014 via a letter from HUD. No such document is reflected in the current record. Petitioner acknowledged he had received a Debt Notice of Intent from HUD dated October 16, 2014 (October 2014 Debt Notice), a Notice he later admitted was received nearly two years ago. *Petitioner's Documentary Evidence (Pet'r Doc.)*, filed October 12, 2016.

On January 11, 2016, the United States Treasury Bureau of Fiscal Services sent Petitioner a Debt Notice (January 2016 Debt Notice) informing him that his debt to HUD had been referred to that particular agency for collection.¹ *See Pet'r Docs.* This January 2016 Debt Notice was sent to Petitioner's then address of record in Fontana, California. Since Petitioner did not respond to that Notice, all or part of Petitioner's federal income tax return was applied, on February 18, 2016, to the subject debt owed to HUD.

On March 10, 2016, nearly two years after receipt of the October 2014 Debt Notice, Petitioner filed what was deemed a *Request for Hearing* (Hearing Request) with HUD's Office of Hearings and Appeals. Petitioner admitted that, in error, he initially addressed his Hearing Request to the Department Claims Officer, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. But later, Petitioner correctly filed his Hearing Request with this Court on May 16, 2016, again nearly two years after receiving the October 2014 Debt Notice. Petitioner's explanation for his admitted untimely filing was that he, in error, addressed his previous request to the HUD's Department Claims Officer.

¹ On the face of the January 2016 Notice the subject debt previously handled by HUD had later been referred to another agency and was now identified as being owed to the Department of Agriculture, USDA, NFC, OCFO, Administrative Consumer (NFC3). The Court notes that NFC3 handles payroll matters on behalf of HUD. Petitioner submitted evidence that the debt to NFC3 is the same debt originally owed to HUD.

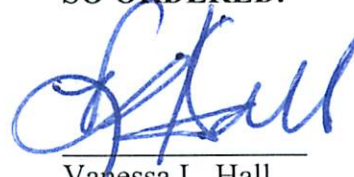
The October 2014 Debt Notice that Petitioner acknowledged receiving constituted sufficient notice of the debt and also of Petitioner's due process rights. See Fuentes v. Shevin, 407 U.S. 67, 82 (1972) (The "root requirement" of the Due Process Clause is that an individual be given an *opportunity* to be heard before he is deprived of any significant property interest.); Boddie v. Connecticut, 401 U.S. 371, 379 (1971); Armstrong v. Manzo, 380 U.S. 545, 552 (1965) (the fundamental requirement of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner"). (Emphasis in original) See also 24 C.F.R. § 17.71 (requiring debtors to file requests for hearing with the Court). Petitioner's claim, that merely postmarking his Hearing Request 60 days from the date of the January 2016 Debt Notice renders his Hearing Request timely, is without merit. By Petitioner's own admission, 24 C.F.R. § 17.69 (b) applies to his case. See Petitioner's Response to Order to Determine Jurisdiction, at p. 2.

The Office of Hearings and Appeals (OHA) has jurisdiction over administrative offset appeals that are *timely* filed pursuant to governing regulations. (Emphasis added) See 24 C.F.R. § 17.61 et seq., § 17.69. The October 2014 Debt Notice provided Petitioner with the opportunity to contest the enforceability or past due status of the subject debt. Petitioner failed to take advantage of that opportunity in a timely manner by providing supporting documentation to HUD's Human Resource Management Office within the 60-day period required by regulation. As a result, review by this Court of Petitioner's Hearing Request is deemed untimely.

Consistent with 24 C.F.R. §17.69(b) by which this Court is bound and required to comply, Petitioner's appeal is hereby **DISMISSED WITH PREJUDICE** *sua sponte*.

The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative offset is VACATED.

SO ORDERED.



Vanessa L. Hall
Administrative Judge