

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

In the Matter of:

Dewayne Griggs,

Petitioner.

16-VH-0101-AO-014

7-210082630A

March 16, 2017

**DECISION AND ORDER**

On May 31, 2016, Dewayne Griggs ("Petitioner") filed a *Request for Hearing* ("*Hearing Request*") concerning the amount, enforceability, or payment schedule of a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720A), authorizes federal agencies to use administrative offsets as a mechanism for the collection of debts allegedly owed to the United States government. 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. In accordance with the procedures set forth at 24 C.F.R. §§ 17.69 and 17.73, the administrative judges of this Court have been designated to conduct a hearing to determine whether the alleged debt is past due and legally enforceable.

**Procedural History**

Pursuant to 24 C.F.R. § 17.81(a), on June 1, 2016, this Court stayed the issuance of an administrative offset of any federal payment due Petitioner until the issuance of this written decision. Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), 2. Petitioner filed documentary evidence on August 15, 2016. *See Petitioner's Documentary Evidence ("Pet'r's Doc. Evid.")*. On October 12, 2016, the Secretary filed a *Motion to Dismiss* the administrative offset proceeding without prejudice due to the Petitioner's financial circumstances. The Secretary determined that, although the debt owed to HUD was past due and enforceable, offset of Petitioner's pay would create undue financial hardship. On October 24, 2016, the Court issued an Order to the Secretary seeking clarification for the Secretary's request for dismissal based solely on the creation of financial hardship for the Petitioner in this administrative offset case.

In response, the Secretary filed a *Statement* on November 22, 2016 admitting that the *Motion to Dismiss* was filed in error since the existence of financial hardship has no legal bearing on debt collections by means of administrative offset. The Secretary then filed a *Withdrawal of its Motion to Dismiss* on December 12, 2016 that was later granted by the Court on December 14, 2016. This case is now ripe for review.

**Background**

On or about May 21, 2012, Petitioner executed and delivered to the Secretary a Subordinate Note ("Note") in the amount of \$21,408.12. *Sec'y Stat.*, ¶ 2. In return, HUD advanced funds to Petitioner's mortgage lender, thereby allowing Petitioner to avoid foreclosure on his home. *Sec'y Stat.*, ¶ 3; Ex. 2, Note. "Paragraph 4 of the Subordinate Note cites specific events which make the debt become due and payable. One of those events is the

payment in full of the primary note, which was insured against default by the Secretary." *Sec'y Stat.* 1 3; Note, 4(A)(i), (iii).

On or about March 15, 2015, the "FHA insurance on Petitioner's primary note was terminated when the lender informed the Secretary that the note was paid in full." *Sec'y Stat.*, ¶ 5, Ex. 2, *Declaration of Gary Sautter ("Sautter Decl.")*, Ex. 2. The Subordinate Note was thus due in full at that time. *Sec'y Stat.*, ¶ 5. Petitioner failed to make payment on the Subordinate Note at the place and in the amount as specified. *Sec'y Stat.*, ¶ 4; *Sautter Decl.*, ¶ 2, Ex. 2. Consequently, Petitioner's debt to HUD is delinquent. *Sautter Decl.*, ¶ 6.

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

- (a) \$21,408.12 as the unpaid principal balance as of October 30, 2016;
- (b) \$142.64 as the unpaid interest on the principal balance at 1% per annum through October 30, 2016;
- (c) \$1,324.10 as the unpaid penalties and administrative costs as of October 30, 2016; and
- (d) interest on said principal balance from November 1, 2016, at 1% per annum until paid.

*Sec'y Stat.*, ¶ 7; *Sautter Decl.*, ¶ 6.

A Notice of Intent to Collect by Treasury Offset was sent to Petitioner on April 11, 2016. *Sautter Decl.*, ¶ 7. On August 2, 2016, Petitioner's primary mortgage servicer, Ocwen Loan Servicing, LLC, sent to Petitioner's address a letter explaining, pursuant to HUD guidelines, how they were able to modify your loan for a certain amount and create a 2<sup>nd</sup> lien/partial claim for another amount. The lien/partial claim was assigned to HUD for collection after the modification and only after HUD receives all required and recorded documents. HUD will collect the 2<sup>nd</sup> lien at the maturity of the loan or the pay-off/refinancing of the loan. Ex. 3.

### Discussion

Petitioner initially disputed the existence of the debt and claimed that the subject debt was already paid in full. *Hearing Request* at 1. On August 5, 2016, Petitioner filed documentary evidence claiming that he was "informed by [Ocwen] that there is no second lien on the property and they sent me my de[e]d which was paid in full." According to Petitioner, "they [Ocwen] advised me to disregard the letter from HUD explaining to me that there has been fraudulent activity...." Beyond the allegations presented, there is no reflection in the record that Petitioner provided documentation in support of his allegations.

The Secretary, on the other hand, states "the FHA insurance on Petitioner's primary note was terminated when the lender informed the Secretary that the note was paid in full." *Sec'y Stat.*, ¶ 5. As support, the Secretary introduced into evidence copies of the Subordinate Note signed by Petitioner and a sworn affidavit from the Acting Director of HUD's Asset Recovery Division to substantiate that the alleged debt is due.

After reviewing the record of this proceeding, the Court is not fully persuaded that Petitioner was released from his contractual obligation to pay in full, or has in fact paid in full, the debt that is the subject of this proceeding. The Secretary's right to collect the alleged debt in this case emanates from the terms of the Subordinate Note. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG 11 (June 22, 2007). "[I]f satisfaction of a senior deed of trust prevents a junior trust holder from enforcing a junior trust deed on the same real property, the junior trust holder may collect the debt, now unsecured, by initiating collection efforts based on the obligations in the loan note." Mitchell and Rosalva Fraijo, HUDBCA No. 99-C-CH-Y200 at 3 (March 20, 2000); John Bilotta, HUDBCA No. 99-A-CH-Y258 (December 29, 1999) (citing Kimberly S. (King) Thede HUDBCA No. 89-4587-L74 (April 23, 1990)). Petitioner became legally obligated to pay the debt when he signed the Subordinate Note. In this case HUD, as the junior trust holder, may initiate collection efforts in accordance with the terms of the Subordinate Note because the primary Note has been paid in full.

For Petitioner not to be held liable for the alleged debt, he must produce evidence of either (1) a written release from HUD specifically discharging Petitioner's obligation for payment of the alleged debt; or (2) evidence of valid or valuable consideration paid to HUD that released Petitioner from his obligation, or was accepted by the lender with the intent to release Petitioner from his legal obligation. Franklin Hamer, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); William Holland, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); Ann Zamir (Schultz) HUDBCA No. 99-A-NY-Y155 (October 4, 1999); Valerie L. Karpanai, HUDBCA No. 87-2518H5 1 (January 27, 1988); Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); and Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986). Herein, Petitioner failed to produce evidence of a written release discharging Petitioner for the debt associated with the Subordinate Note. He also has failed to produce evidence of valuable consideration paid to HUD in satisfaction of the alleged debt that is sufficient enough to render the alleged debt unenforceable. As a result, the Court finds that in the absence of evidence to refute or rebut the evidence presented by the Secretary, Petitioner's claim fails for lack of sufficient proof.

Finally, Petitioner extended an offer "to move forward in setting forth a payment plan that will fit the original payment schedule of 26 years." *Hearing Request* at 1. While Petitioner may wish to negotiate repayment terms with the HUD, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Jason Bump, HUD Financial Operations. His telephone number is 1-518-862-2880. A review of Petitioner's financial status may be conducted if Petitioner submits to that HUD office a Title 1 Financial Statement (HUD Form 56142).

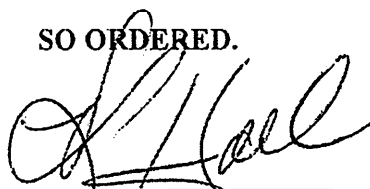
### **ORDER**

Based on the foregoing, Petitioner remains contractually obligated to pay the subject debt in the amount claimed by the Secretary.

The Order imposing the stay of referral of 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.**

A handwritten signature in black ink, appearing to read 'V. Hall', written over a horizontal line.

Vapessa L. Hall  
Administrative Judge

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**Review of determination by hearing officers.** A motion for reconsideration of this 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.