

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

In the Matter of:

Alfredia D. Jones,

Petitioner.

16-VH-0141-AO-027

7-210085840A

February 27, 2017

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* ("Hr'g. Req.") filed by Alfredia D. Jones ("Petitioner"), on September 6, 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 September 7, 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"). Petitioner filed a *Statement* ("Pet'r Stat."), along with documentary evidence, on November 21, 2016. On December 28, 2016, the Secretary filed a *Secretary's 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 the Court, in accordance with the procedures set forth at 24 C.F.R. §§ 17.69 and 17.73, have been designated to conduct a hearing to determine, by a preponderance of 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 August 8, 2013, Petitioner allegedly executed and delivered to the Secretary of HUD a Subordinate Note ("Note") in the amount of \$4,527.88, in exchange for foreclosure relief. *Sec'y Stat.*, ¶¶ 2-3; Ex. 2, Note. The Note cites specific events which render the debt due

and payable, one of which is the payment in full of the primary note, which was insured against default by the Secretary. *Sec'y Stat.*, ¶ 4; Ex. 2, Note. On or about December 16, 2015, the FHA mortgage insurance on the primary mortgage was terminated when the lender informed the Secretary that the Note was paid in full. *Sec'y Stat.*, ¶ 5; Ex. 1, *Declaration of Kathleen M. Porter*¹ ("*Porter Decl.*"), ¶ 4. Petitioner failed to make payment to HUD. *Sec'y Stat.*, ¶ 6. The Secretary has made efforts to collect the debt from Petitioner but has been unsuccessful. *Id.*

The Secretary has filed a *Statement*, with documentary evidence, in support of his position that Petitioner is currently in default on the Note and that Petitioner is indebted to HUD in following amounts:

- a) \$4,527.88 as the total unpaid principal balance as of November 30, 2016.
- b) \$18.85 as the unpaid interest on the principal balance at 1% per annum through November 30, 2016.
- c) \$307.91 as the unpaid penalties and administrative costs as of November 30, 2016; and
- d) interest on said principal balance from December 1, 2016 at 1% per annum until paid.

Sec'y Stat., ¶ 7; Ex. 1, *Porter Decl.*, ¶ 5.

A *Notice of Intent to Collect by Treasury Offset* ("Notice") dated August 8, 2016, was sent to Petitioner. *Sec'y Stat.*, ¶ 8; Ex. 1, *Porter Decl.*, ¶ 6. Petitioner filed a request for hearing on September 6, 2016. *Hr'g Req.*

DISCUSSION

Petitioner does not dispute the existence or amount of her alleged debt to HUD and does not deny signing the Note and Deed of Trust in favor of the Secretary for the amount of \$4,527.88. *See Hr'g Req.*; *see also Petitioner's Supplemental Statement* ("*Pet'r's Supp. Stat.*"), filed November 21, 2016. Petitioner does, however, contend that she does not owe the debt because it was paid in full at the same time that her primary mortgage was paid off. *Pet'r's Supp. Stat.* Petitioner introduced into evidence a copy of a Payoff Summary from the Bank of America that, according to Petitioner, serves as proof that \$99,572.73 was paid in full to Bank of America.

For Petitioner not to be held liable for the alleged debt, she must produce evidence of either (1) 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 Harper, 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. 87-2518-H51 (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)).

¹ Kathleen M. Porter is the Acting Director of the Asset Recovery Division of HUD's Financial Operations Center.

In response, the Secretary contends that Petitioner is still contractually obligated to HUD to repay the amount owed on the Note. *Sec'y Stat.* ¶ 9. The Secretary further contends that Petitioner's claim is not supported by any documentary evidence and as such, "[a]ssertions without evidence are not sufficient to show that a debt claimed by the Secretary is not past due or unenforceable." *Sec'y Stat.* ¶ 9 (citing Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009); Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996); 31 C.F.R. § 285.11(f)(8)(ii)). Without such evidence, Petitioner is obligated to repay HUD in the amount so claimed by the Secretary.

The record of evidence fully supports the Secretary's position. A review of the record shows that Petitioner has in fact failed to produce sufficient evidence of a written release or of payment of valuable consideration to HUD for the subject debt that, had proof been established, would otherwise have rendered the alleged debt unenforceable. *Porter Decl.*, ¶ 8. The Court reviewed the Payoff Summary from Bank of America and again did not find any proof that the December 16, 2015 transaction noted in the Summary included payment in full of HUD's Note, or release from the same.

Without evidence to refute or rebut the evidence presented by the Secretary, the Court finds accordingly that Petitioner's claim of payment in full of the subject debt fails for lack of sufficient proof.

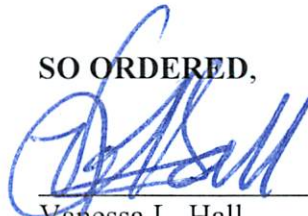
ORDER

Based on the foregoing, Petitioner remains contractually obligated to pay the debt that is the subject of this proceeding.

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,



Vanessa L. Hall
Administrative Judge