

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

In the Matter of:

Nancy M. Leiner,

Petitioner

HUDOA No.: 17-AM-0057-AO-020

Claim No.: 7-210092340A

July 19, 2018

DECISION AND ORDER

On December 19, 2016, Nancy Leiner (“Petitioner”) was notified that, pursuant to 31 U.S.C. §§ 3716 and 3720, the Secretary of the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”) intended to seek administrative offset of any federal payments due Petitioner in order to satisfy a debt Petitioner allegedly owes to HUD.

On January 31, 2017, Petitioner filed a request for a hearing (“Pet’r Hr’g Req”) concerning the existence, amount or enforceability of the alleged debt. The Office of Hearings and Appeals has jurisdiction to determine whether Petitioner’s debt is legally enforceable. 24 C.F.R. § 17.69(c). As a result of Petitioner’s hearing request, referral of the debt to the U.S. Department of the Treasury for the administrative offset was temporarily stayed by the Court on February 6, 2017, until the issuance of this *Decision and Order*. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated February 6, 2017).

Background

On November 8, 2012, Petitioner executed and delivered to the Secretary a *Subordinate Note* (“Note” or “Subordinate Note”) in the amount of \$68,889.00, in exchange for HUD advancing funds to Petitioner’s FHA insured mortgage lender. (Secretary’s Statement (“Sec’y Stat.”) ¶ 2, filed April 20, 2017; Ex. 2, Note.) The Note described four events that would cause the debt to become immediately due and payable. (Sec’y Stat., ¶ 4; Ex. 2, p. 1, ¶ 4.) One of these events was the payment in full of the primary note and related mortgage. (Id.) On or about October 7, 2015, the insurance on the first mortgage was terminated, as the mortgage was paid in full. (Sec’y Stat., ¶ 5; Ex. 1, Declaration of Gary Sautter¹ (“Sautter Decl.”)). Therefore, Petitioner became liable for the full amount of the Subordinate Note.

¹ Mr. Sautter is the Director of the Asset Recovery Division of HUD’s Financial Operations Center for HUD.

HUD states that it has attempted to collect on the Note from the Petitioner, but without success. (Sec’y Stat., ¶ 6.) Consequently, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a. \$68,889.00 as the unpaid principal balance as of March 30, 2017;
- b. \$286.90 as the unpaid interest on the principal balance at 1% per annum through March 30, 2017;
- c. \$4,182.44 as the unpaid penalties and administrative costs as of March 30, 2017; and
- d. Interest on said principal balance from April 1, 2017, at 1% per annum until paid.

(Sec’y Stat., ¶ 7; Sautter Decl., ¶ 5.)

HUD sent a Notice of Intent to Collect by Treasury Offset dated December 19, 2016, to Petitioner. (Sec’y Stat., ¶ 8; Sautter Decl., ¶ 6.)

Discussion

Pursuant to 31 U.S.C. §§ 3716 and 3720, federal agencies may pursue the remedy of administrative offset of federal payments for the collection of debts owed to the United States government. Petitioner bears the burden of submitting evidence to prove that the debt is not past due or legally enforceable. 24 C.F.R. § 17.69(b); Cydney Taylor, HUDOHA No. 14-AM-0063-OA-005 (Oct. 22, 2014), citing Juan Velazquez, HUDBCA No. 02-C-CH-CC049 (Sept. 25, 2003).

In the letter accompanying Petitioner’s hearing request, filed January 31, 2017, Petitioner claims that the debt is not past due or legally enforceable. (Pet’r Hr’g Req.) However, Petitioner did not produce any documentary evidence tending to support that assertion.² Instead, Petitioner argues that, when she sold the property carrying the debt in October 2015, she relied upon representations made by the title company to her detriment. “The property was given a clear title by the title company,” Petitioner asserts, “[i]f the debt was not handled properly, I feel it should be covered by the title company and their assurance that all was settled.” (Pet’r Hr’g Req.) However, a third party’s error or negligence does not relieve Petitioner of liability for her debt to HUD in the first instance. See Bryan McClees, HUDOHA No. 17-AM-0037-AO-010 (Feb. 14, 2018).³ The Secretary’s right to collect the subject debt in this case emanates from the terms of the Note. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007).

The Note signed by Petitioner on February 3, 2015 states:

² Petitioner’s documentary evidence included the Settlement Statement and the Payoff Statement from Bank of America from the 2015 sale of the property.

³ The role of a title company in transactions for the sale of real property is primarily for the benefit of the buyer. See Camp v. Commonwealth Land Title Ins. Co., 787 F.2d 1258, 1261 (8th Cir. 1986). If Petitioner feels she detrimentally relied on representations made by the title company, she may potentially pursue a cause of action against the title company in state court. However, the jurisdiction of this Court is limited to determining “whether the debt is past due and enforceable, and in what amount.” Edgar Joyner Sr., HUDBCA No. 04-A-CH-EE052 (June 15, 2005); See 24 C.F.R. § 17.69.

2. BORROWER'S PROMISE TO PAY

In return for a loan received from lender, Borrower promises to pay the principal sum of \$ 68,889.00 . . . to the order of lender.

(Sec'y Stat., Ex. 2, p. 1, ¶ 2).

Petitioner apparently did not realize that the Subordinate Note was indeed a separate obligation owed directly to HUD. The Note plainly identifies the "Lender" as the "Secretary of Housing and Urban Development and its successors and assigns" and instructs Petitioner to "pay to the order of the Lender." (Sec'y Stat., Ex. 2, p. 1, ¶ 1 and 2). Since the title company was not a signatory on the Note and did not service the Note, it incurred no obligation with respect to the Note. See Cyndie Taylor, HUDOHA No. 14-AM-0063-OA-005 (Oct. 22, 2014). Likewise, HUD was not privy to Petitioner's contract with the title company and cannot be bound by the title company's actions or failure to act.

To demonstrate that the debt has been satisfied, there must be (1) a written release from HUD specifically discharging Petitioner's obligation, or (2) valuable consideration accepted by HUD that indicates an intent to release. William Blackman, HUDOHA No. 12-VH-NY-AO-48 (June 6, 2013) (citing Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005)). Petitioner has not submitted evidence that demonstrates that the debt has been satisfied by either a written release discharging Petitioner's obligation or valuable consideration paid to HUD in satisfaction of this debt. Petitioner provided a payoff statement from Bank of America pertaining to her primary mortgage that contains the same FHA number as the Note, but this does not demonstrate satisfaction of her separate debt to HUD.

As of January 2017, Petitioner stated that she had been battling cancer for eighteen months. (Pet'r Hr'g Req.) Petitioner also indicated that she had been in and out of the hospital around the time she sold the property. (Id.) The Court recognizes Petitioner's extensive medical history and sympathizes with her situation. However, Petitioner signed the Note voluntarily and is obliged to comply with its terms. Petitioner has failed to cite any legal authority or language in the Note that requires the Secretary to forgo collection of the balance.

In light of the forgoing documentary evidence, Petitioner has not met her burden to prove that the debt is not past due or legally unenforceable. This Court, therefore, finds that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

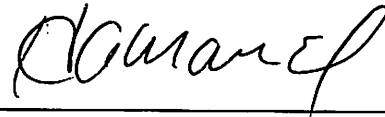
ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. It is

ORDERED that the Order imposing the Stay of Referral of this matter to the U.S. Department of the Treasury for administrative offset is **VACATED**. It is

FURTHER ORDERED that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative offset of any federal payment due Petitioner.

SO ORDERED.

A handwritten signature in cursive script, appearing to read "H. Alexander Manuel".

H. Alexander Manuel
Administrative Judge