

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

In the Matter of:

SHIRLEY BROWN,

Petitioner.

17-AM-0070-AO-023

7210089150A

March 13, 2019

DECISION AND ORDER

On February 23, 2017, Shirley Brown, ("Petitioner") filed a Request for Hearing concerning the amount and enforceability 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 utilize administrative offset as a means for collecting debts owed to the United States government. The regulation governing offsets can be found at 24 C.F.R. §§ 17.65-17.79 *et seq.*

The Secretary of HUD designated the administrative judges of the Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts using administrative offset. This administrative court is authorized to issue written decisions concerning whether a debt or part of a debt is past due and legally enforceable. 24 C.F.R. § 17.73.

BACKGROUND

The Secretary alleges that, on or about November 11, 2014, Petitioner sought financial assistance from HUD to help her avoid possible foreclosure of her mortgage with her primary lender, Bank of America of Broomfield, CO ("B of A" or "primary lender"). HUD loaned Petitioner the sum of \$7,166.83 to help her avoid defaulting on her mortgage with B of A. (*See Secretary's Statement*, ("Sec'y Stat."), ¶ 3; Exh. A, Declaration of Gary Sautter, ("Sautter Decl.") Acting Director of the Asset Recovery Division, HUD Financial Operations Center, ¶ 1.) Petitioner executed and duly delivered a subordinate note ("Note"), evidencing this loan to HUD. (*See Sec'y Stat.*, Exh. B, the Note, dated November 11, 2014). Under the terms of the Note, Petitioner was to pay the principal amount of the unpaid balance on the Note until it was paid in full. (*See Sec'y Stat.*, Ex. B, ¶2). The Note cited specific events that could cause the remaining unpaid balance of the debt to become immediately due and payable - one of which was when Petitioner's underlying mortgage to her primary lender was refinanced or otherwise paid in full. (*See Sec'y Stat.*, Ex. B, ¶¶ 4(A)(i) & (iii)).

On or about December 17, 2015, Petitioner's primary lender notified HUD that Petitioner's underlying mortgage with B of A had been paid in full. This automatically triggered both the termination of B of A's insurance contract with the Federal Housing Administration, as well as the provisions of ¶ 4(A)(i) & (iii) of the Note, requiring Petitioner to pay the full amount owed under the Note to HUD. HUD, thereafter, made its demand upon Petitioner to pay the amounts owed, but Petitioner failed to do so. As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$7,166.83 as the unpaid principal balance as of November 30, 2017;
- b) \$83.58 as the unpaid interest on the principal balance at 1% per annum through November 30, 2017;
- c) \$466.77 as the unpaid penalties and administrative costs through November 30, 2017; and
- d) interest on said principal balance at 1% per annum until paid.

(See *Secretary's Statement*, dated December 6, 2017, ¶ 9; Ex. A, Declaration of Gary Sautter ¶ 5).

On or about November 28, 2016, a Notice of Intent to Collect by Treasury Offset ("Notice") was mailed to Petitioner. (See *Sec'y Stat.*, ¶ 10; Sautter Decl., ¶ 6). Petitioner requested a hearing in connection with the Notice in order to contest the alleged indebtedness in this case.

DISCUSSION

In support of her Request for Hearing, Petitioner has filed a letter, dated February 23, 2017 ("*Pet. Ltr.*") together with (1) her copy of the Notice of Intent to Collect by Treasury Offset, (2) a letter from B of A, dated August 14, 2015 with the caption "You are approved for a full principal forgiveness of your first lien mortgage and Subordinate Note," and (3) a recordation of a Mortgage Satisfaction, dated February 17, 2015, pertaining to Book 2005, Page 3652.

Petitioner maintains that these documents provide written proof that she paid, not only her underlying mortgage, but also the debt for the subordinate note at issue in this case. Petitioner states that:

I have been in contact with Mr. Tim Oravec at the Financial Operations CTR in Albany, NY in regards to this situation since November of 2016. I have explained to him that my mortgage have [sic] been paid off by BOA on December 17, 2015 due to a full principal forgiving loan and the debt that was due to HUD was also in that pay off. I have provided a copy of my pay off letter from Bank of America dated 08/24/2015 and a Lien Release statement that was signed off by Secretary of Housing and Urban Development dated 02/17/2015 in book 2005, page 3652 . . . I have been in contact with Bank of America up till this day and was inform[ed] on several occasion[s] that everything has been paid in full and release[d] to HUD.

Pet. Ltr.

As evidence of the Petitioner's indebtedness, the Secretary has filed the *Secretary's Statement*, together with the sworn declaration of Gary Sautter, Acting Director, Asset Recovery Division, HUD Financial Operations Center; a copy of the Note, and accompanying notices and documents. (*See Sec'y Stat.*, Ex. A; Ex. B; Ex. C). Accordingly, the Court finds that the Secretary has met his initial burden of proof.

In direct response to Petitioner's arguments, the Secretary agrees that B of A paid off Petitioner's primary mortgage on or about December 17, 2015, along with a subordinate note debt to HUD. However, the Secretary maintains that the subordinate note debt that Petitioner paid at that time is not the same subordinate note debt that is at issue in this case.

The Secretary argues that Petitioner had two subordinate note debts to HUD. Only one was paid when she paid off her primary mortgage to B of A in December 2015. The two subordinate note amounts were similar. The subordinate note debt that was paid off was in the original amount of \$7,916.91, and was recorded in the South Carolina records at Book 2005, Page 3652. *See Sec'y Stat.*, ¶ 13; *Pet. Ltr.* The debt at issue in this case was in the original amount of \$7,166.83, and was recorded at Book 2030, Page 1031. *Id.* The latter debt was never repaid to HUD. *Sec'y Stat.*, Ex. A, ¶ 7-8.

Petitioner has been afforded more than ample opportunity to come forward with documentary evidence in support of her position, and has provided no documentation to prove that the second subordinate note debt in the amount of \$7,166.83 was ever repaid. The Secretary's position was further supported by Carlo Porcelli, Senior Vice President of Bank of America, in an email sent by him to HUD on December 1, 2017, where he confirmed that Petitioner had two Partial Claims (HUD subordinate notes) in the amount of \$7,916.91 and \$7,166.83, and that B of A had only forgiven the former debt, not the latter. *See Sec'y Stat.*, Ex. A ¶ 7-8.

Petitioner has not brought forth any evidence to show that the amounts claimed by the Secretary were repaid. This Court has consistently maintained that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and enforceable.” (*See Michael R. Bridges*, HUDOHA No. 13-AM-0125-AG-054 (August 13, 2013); *Eric and Eliza Rodriguez*, HUDOHA No. 13-AM-0061-AG-023 (April 17, 2013)(*citing Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005); *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009), *citing Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)).

For Petitioner not to be held liable for the subject debt, she must submit evidence of either (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release her from her legal obligation. *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005). Here, Petitioner has failed to come forward with any appreciable evidence to meet her burden of proof.

Upon consideration of the evidence and arguments provided by the parties, including the *Pet. Ltr.*, the *Secretary's Statement*, and all accompanying documentation, the Court finds that Petitioner has not met her burden to prove that she is not indebted to the Department in the amounts claimed by the Secretary. The Court therefore finds in favor of the Secretary as to the amounts set forth in the *Secretary's Statement*.

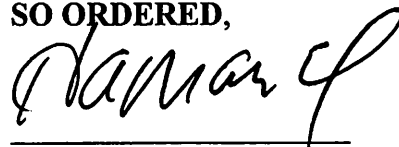
ORDER

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 to Petitioner.

SO ORDERED,



H. Alexander Manuel
Administrative Judge