

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

In the Matter of:

Martha E. Kumer,

Petitioner.

17-VH-0056-AO-019

7-210093350A

November 9, 2017

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on January 31, 2017, by Petitioner Martha E. Kumer (“Petitioner”) 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 February 1, 2017, the Court stayed the issuance of an administrative offset of any federal payment due to Petitioner until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral* (Notice of Docketing) at 2. On March 02, 2017, the Secretary filed a *Secretary’s Statement*, along with documentary evidence, in support of his position. This case is now ripe for review.

JURISDICTION

This Court 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 this 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 the 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 offsets as a mechanism for the collection of debts allegedly owed to the United States government.

On or about September 15, 2014, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note (“Note”) in the amount of \$11,459.91. *Sec’y. Stat.* ¶ 2, Ex. 1,

Declaration of Brian Dillon (“Dillon Decl.”), ¶ 4. As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner’s FHA insured mortgage lender, which was the holder of Petitioner’s Primary Mortgage Note (“Primary Note”). *Sec’y. Stat.* ¶ 3. The Note cites specific events that make the debt become due and payable. One such even is the payment in full amount of the Primary Note and related mortgage. *Sec’y. Stat.* ¶ 4.

On or about April 13, 2016, the Petitioner’s first mortgage was paid in full and the FHA mortgage insurance was terminated. As a result, HUD attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec’y. Stat.* ¶ 5. A Notice of Intent to Collect by Treasury Offset was mailed to Petitioner at her last-known address on January 17, 2017. *Sec’y. Stat.* ¶ 6.

On January 31, 2017, Petitioner submitted documentary evidence in support of her position. Petitioner claimed that she did not owe the debt because her mortgage had been fully satisfied and paid off when her home was sold. According to Petitioner, the debt owed pursuant to HUD’s Note was or should have been included in the payoff made to Petitioner’s first lienholder, Wells Fargo Bank, N.A. On March 02, 2017, the Secretary provided its statement and asserted that the payoff only satisfied Petitioner’s first lien Wells Fargo mortgage, and did not pay off the debt due to HUD, as a result, Petitioner’s debt was past due and legally enforceable.

The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- a) \$11,459.91 as the unpaid principal balance as of January 31, 2017;
- b) \$19.10 as the unpaid interest on the principal balance at 1.0% per annum through January 31, 2017; and
- c) interest on said principal balance from February 1, 2017, at 1.0% per annum until paid.

Sec’y. Stat. ¶ 7; *Dillon Decl.*, ¶ 5.

DISCUSSION

Petitioner claims that she does not owe the debt because her mortgage was fully paid off when her home was sold. According to Petitioner, the debt owed pursuant to HUD’s Note was included in the payoff made to Petitioner’s first lienholder, Wells Fargo Bank, N.A. *Petitioner’s Hearing Request (Hrg. Req.)*, filed January 31, 2017. In support of her argument, Petitioner provided a Certificate of Satisfaction, dated April 29, 2016, which Petitioner claims demonstrates satisfaction of HUD’s Note. Petitioner also introduced into evidence a list of documents along with her Hearing Request, but none of the documents demonstrated that the subject debt had been satisfied.

Petitioner further contends that she exercised her best faith effort to determine from HUD partner, Wells Fargo, the total indebtedness she owed the Secretary. She contends that, on her behalf, her settlement agent, Cotton Duck Title Company, requested from Wells Fargo the total amount due for both the first mortgage and Note. Consequently, according to Petitioner, the total sum for the subject debt was collected at settlement, and the settlement attorney thereafter wired the total amount of the subject debt to Wells Fargo as satisfaction of the first mortgage and the Note. As proof of such transaction, Petitioner produced a copy of the Certificate of Satisfaction, dated April 29, 2016.

In response, the Secretary argues that Petitioner has failed to provide any evidence that controverts the existence, amount, and validity of the debt. The Secretary further contends that the limited evidence that Petitioner submitted, the copy of the Certification of Satisfaction, pertains only to the satisfaction of Petitioner's first lien that is the primary note with Wells Fargo. So, the HUD Note herein remains past due, unsatisfied, and enforceable against Petitioner.

The Secretary's right to collect the subject debt in this case emanates from the terms of the Subordinate Note. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (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 Fajjo, HUDBCA No. 99-C-CH-Y200 at 3 (March 20, 2000). Here, Petitioner became contractually obligated to pay the debt when she signed the Subordinate Note. As the junior trust holder, HUD 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 full amount of the debt, there must either be a release in writing from the former lender explicitly relieving Petitioner's obligation, "or valuable consideration accepted by the lender" indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). In this case, Petitioner has failed to produce sufficient evidence of a written release from HUD that discharges Petitioner for the debt associated with the Subordinate Note. She has also failed to produce evidence of valuable consideration paid to HUD in satisfaction of the subject debt that would render this debt unenforceable. The only evidence submitted by Petitioner, the copy of the Certificate of Satisfaction, is proof of satisfaction of the primary lien, and is deemed by the Court to be insufficient as proof of full payment of, or release from, the debt that is the subject of this proceeding.

Therefore, the Court finds that Petitioner's claim that the subject debt was satisfied fails for lack of proof, and thus the Court must find that Petitioner remains contractually obligated to pay the debt amount so claimed by the Secretary.

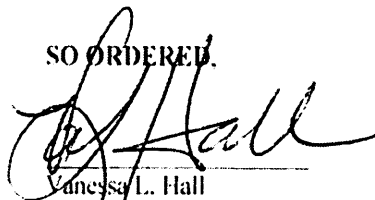
ORDER

Based on the foregoing, Petitioner remains contractually obligated to pay the alleged debt in the amount so 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.

Vanessa L. Hall
Administrative Judge