

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

In the Matter of:

Sheila Smith,

Petitioner.

17-VH-0059-AO-017

7-21008702-0

December 4, 2017

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on February 07, 2017, by Petitioner Sheila Smith (“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”).

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 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.

PROCEDURAL HISTORY

Pursuant to 24 C.F.R. § 17.81(a), on February 28, 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 May 18, 2017, the Secretary filed a *Secretary’s Statement*, along with documentary evidence, in support of her position. (*Secretary’s Statement* (“*Sec’y. Stat.*”) ¶ 2, filed May 18, 2017.) This case is now ripe for review.

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 January 20, 2014, Sheila Smith executed and delivered to the Secretary a Subordinate Note (“Note”) in the amount of \$13,289.10. *Sec’y. Stat.* ¶ 2, Ex. 1, *Declaration of Brian Dillon* (“*Dillon Decl.*”), ¶ 4. The Note secured a Subordinate Mortgage held by the Secretary. *Sec’y. Stat.* ¶ 2. As a means of providing foreclosure relief, HUD advanced funds to Petitioner’s FHA insured mortgage lender. *Sec’y. Stat.* ¶ 3. In exchange for these funds, Petitioner executed the Note in favor of the Secretary. *Id.* The Note cites specific events that make the debt become due and payable. One such event is the payment in full amount of the Primary Note and related mortgage. *Sec’y. Stat.* ¶ 5.

On or about January 30, 2015, 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.* ¶ 6. A Notice of Intent to Collect by Treasury Offset was mailed to Petitioner on or about September 12, 2016. *Sec’y. Stat.* ¶ 8.

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

- a) \$13,289.10 as the total unpaid principal balance as of March 31, 2017;
- b) \$88.56 as the unpaid interest on the principal balance at 1% per annum through March 31, 2017;
- c) \$835.3 as the unpaid penalties and administrative costs as of March 31, 2017; and
- d) interest on said principal balance from April 1, 2017 at 1% per annum until paid.

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

DISCUSSION

Petitioner claims that she does not owe the debt because it was allegedly paid off when her home was sold. In support of her argument, Petitioner provided documentary evidence consisting of a partial Chicago Title Insurance Commitment Schedule that lists HUD’s loan, which was to be included in the bank payoff letter prior to the sale. Petitioner also provided the Ocwen Payoff Quote for the sale of her home.

However, the Ocwen Payoff Quote does not mention HUD’s Note, nor does it include any payment of the Note. For Petitioner not to be held liable for the full amount of the debt, there must be either 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). It is also well established

that “assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due and legally enforceable.” Sara Hedden, HUDOA No. 09-H-NY-AWG95 (July 8, 2009), quoting Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996).

In this case, Petitioner has failed to submit any documentary evidence that demonstrates that HUD’s Note was paid off. She has also failed to produce any evidence of a written release from HUD that discharges Petitioner for the debt associated with the Subordinate Note, or any valuable consideration paid to HUD in satisfaction of the alleged debt that would render the alleged debt unenforceable.

As a result, the Court finds that Petitioner has failed to produce evidence of a written release from her obligation to pay the alleged debt, or evidence of valuable consideration paid to HUD in satisfaction of the debt, sufficient to render the alleged debt as being satisfied. Accordingly, the Court must find that Petitioner remains contractually obligated to pay the alleged debt as so claimed by the Secretary.

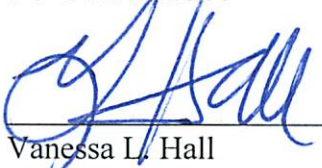
ORDER

Based on the foregoing, Petitioner remains legally 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.



Vanessa L. Hall
Administrative Judge

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.