

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

In the Matter of:

Jacqueline and James McPeters,

Petitioner.

17-VH-0094-A0-036

7-210102500A

7-210102500B

January 16, 2018

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on May 2, 2017, by Petitioners Jacqueline and James McPeters (“Petitioners”) 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 May 8, 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 June 21, 2017, Petitioners filed their Statement along with documentary evidence in support of their position. On July 14, 2017, the Secretary filed a *Secretary’s Statement*, along with documentary evidence, in support of his position. 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 February 1, 2007, Jacqueline R. and James C. McPeters executed and delivered to the Secretary a Subordinate Note (“Note”) in the amount of \$ 5,509.03. *Sec’y. Stat.* ¶ 2, Ex. 1, *Declaration of Gary Sautter (“Sautter 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.* ¶ 4.

On or about November 10, 2016, the FHA mortgage insurance on Petitioner’s primary mortgage was terminated as the lender indicated the primary note and mortgage was paid in full. 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 April 17, 2017. *Sec’y. Stat.* ¶ 8, Exhibit 1, ¶ 8.

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

- a) \$ 5509.03 as the total unpaid principal balance as of May 31, 2017;
- b) \$ 13.77 as the unpaid interest on the principal balance at 1% per annum through May 31, 2017; and,
- c) interest on said principal balance from June 1, 2017 at 1% per annum until paid.

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

DISCUSSION

Petitioner claims that she does not owe the debt because the subject debt was listed as a creditor in their bankruptcy proceeding and therefore discharged. As support, Petitioner introduced into evidence a copy of a Plan Completion Report (“Report) issued by the United States Bankruptcy Court, Eastern District of Kentucky, Covington Division, on March 3, 2014, along with the listing of claims. *Hearing Request*, Attachment.

A review of Petitioner’s Report shows a list of scheduled creditors, but, that list does not include HUD as a creditor. Petitioners need to produce documentary evidence, such as an actual order of discharge, which would prove that the subject debt has been discharged by the U.S. Bankruptcy Court in the Eastern District of Kentucky. The Report moreover states “Notice is now given to the Debtors and Counsel for the Debtors that in order to receive a Discharge, the Debtors must complete and file with the Court a Certification of Plan Completion and Request for Discharge, Local Form 4004-5a, within 30 days from the date of this Report.” There is no

indication from the record of this proceeding, or from the Report, that Petitioners took that necessary and final step to receive the bankruptcy discharge. Nonetheless, even if Petitioners had completed that step, it would not be material or relevant to this proceeding because the record would still be incomplete as it fails to show HUD as a creditor listed on the Schedule of Creditors. So, the Court finds that the subject debt remains delinquent and Petitioners remain contractually obligated to pay the subject debt.

For Petitioners not to otherwise be held responsible for the full amount of the subject 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). Because Petitioners have also failed to submit documentary evidence that demonstrates that the subject debt was paid off, the Court finds that Petitioners have failed to meet their burden of proof. It is 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). Therefore, the Court again must find, consistent with case law precedent, that Petitioners remain contractually obligated to pay the debt so claimed by the Secretary.

ORDER

Based on the foregoing, Petitioners remain 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.