

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

In the Matter of:

**Janet L. Fryer,**

Petitioner.

17-VH-0116-AO-061

7-2100868308B

January 11, 2018

**DECISION AND ORDER**

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on June 19, 2017, by Petitioner Janet L. Fryer (“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 June 19, 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 October 2, 2017, the Secretary filed a *Secretary’s Statement*, along with documentary evidence, in support of her 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 September 23, 2005, Janet L. Fryer executed and delivered to the Secretary a Partial Claim Promissory Note (“Note”) in the amount of \$11,346.13. *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.* ¶ 4.

On or about March 31, the Petitioner’s first mortgage was paid in full and the FHA mortgage insurance was terminated. Accordingly, HUD has 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 on or about September 12, 2016 to Petitioner’s last known address. *Sec’y. Stat.* ¶ 6.

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

- a) \$11,266.00 as the total unpaid principal balance as of July 30, 2017;
- b) \$18.76 as the unpaid interest on the principal balance at 1.0% per annum through July 30, 2017; and,
- c) interest on said principal balance from July 30, 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 it was allegedly paid off when her home was sold. In support of her argument, Petitioner provided documentary evidence consisting of a copy of a Settlement Statement (“Statement”) from Independence Title Company that listed payoff amounts to JP Morgan Chase and City of Austin.

Upon review, the Statement does not reference the subject debt or a payoff amount for the subject debt. 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 the subject debt 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.

Next, Petitioner states that she “did not respond to the notice since I am unemployed and have no other way for the debt to be paid.” Petitioner’s *Request for Hearing*, date June 4, 2017. The Court acknowledges Petitioner’s financial circumstances, but the law provides “unfortunately, in administrative offset cases evidence of financial hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past-due and enforceable.” *Edgar Joyner, Sr.*, HUDBCA No. 04-A-CH-EE052 (June 15, 2005); *Anna Filiziana*, HUDBCA No. 95-A-NY-T11 (May 21, 1996); *Charles Lomax*, HUDBCA No. 87-2357-G679 (February 3, 1987). Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. *Raymond Kovalski*, HUDBCA No. 87-1681-G18 (December 8, 1986).

Furthermore, no regulation or statute currently exists that permits financial hardship in whatever form to be considered as a basis for determining whether a debt is past-due and enforceable in cases involving debt collection by means of administrative offset. Thus, consistent with case law precedent and statutory limitations, the Court finds that financial hardship cannot be considered as a defense in this case as the debt owed by Petitioner is sought to be collected by means of administrative offset.


### **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

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**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.