

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

In the Matter of:

Amanda Ray Durham,

Petitioner.

17-VH-0126-AO-069

7-807917830A

August 22, 2018

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on July 18, 2017, by Petitioner Amanda Ray Durham ("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. This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable Departmental regulations.

PROCEDURAL HISTORY

Pursuant to 24 C.F.R. § 17.81(a), on July 18, 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 November 21, 2017, Petitioner filed her Statement along with documentary evidence in support of her position. On January 3, 2018, the Secretary filed a *Secretary's Statement (Sec'y Stat.)*, along with documentary evidence, in support of his position. This case is now ripe for review.

FINDINGS OF FACT

This action is brought on behalf of the Secretary of the United States Department of Housing and Urban Development ("Secretary" or "HUD") because of a debt that resulted from a defaulted

loan which was insured against non-payment by the Secretary, from an overpayment by HUD, from delinquent rent payments due to HUD, or due to other reasons. In support of his position, the Secretary produced a copy of the Note signed by Petitioner, along with a copy of a sworn declaration and HUD's Claims Examination Justification for Action. See Sec'y. Stat., Ex. 2; *Dillon Decl.*, ¶ 5.

According to the record, on or about March 20, 2007, Petitioner executed and delivered to Community Builders, an FHA Title I Home Improvement Retail Installment Sales Contract & Disclosure Statement ("Note") in the amount of \$12,00.00. *Sec'y. Stat.* ¶ 2, Ex. 1, Note. The Note was insured against nonpayment by Secretary pursuant to Title I of the National Housing Act. *Sec'y. Stat.* ¶ 2, Ex. 2, *Declaration of Brian Dillon*¹ ("*Dillon Decl.*"), ¶ 3. The Note was duly assigned to First Commercial Bank, and thereafter to Bank SNB.

The Petitioner defaulted on the Note by failing to make payments as agreed in the Note. The Note was subsequently assigned to HUD by Bank SNB under the regulations governing the Title I Insurance Program. *Sec'y. Stat.* ¶ 4, Ex. 2, *Dillon Decl.*, ¶ 3; Ex. 3, Assignment. HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. See Sec'y. Stat., Ex. 2; *Dillon Decl.*, ¶ 4.

Petitioner is justly indebted to the Secretary in the following amounts:

- a) \$9,340.08 as the unpaid principal balance as of December 30, 2017;
- b) \$441.32 as the unpaid interest on the principal balance at 1 % per annum through December 30, 2017;
- c) \$619.88 as the unpaid penalties and administrative costs as of December 30, 2017; and,
- d) interest on said principal balance from December 31, 2017 at 1 % per annum until paid.

Sec'y. Stat. ¶ 6, Ex. 2, *Dillon Decl.*, ¶ 4.

A Notice of Intent to Collect by Treasury Offset ("Notice"), dated May 8, 2017, was mailed to Petitioner's last known address. *Sec'y. Stat.* ¶ 7, Ex. 2, *Dillon Decl.*, ¶ 5.

HUD has reviewed its records regarding the determination of Petitioner's default date. The basis of HUD's calculation of the loan default date and the total number of payments made credited to Petitioner are set forth in HUD's Claims Examination Justification for Action. *Sec'y. Stat.* ¶ 8, Ex. 2-A, HUD's Claims; *Dillon Decl.*, ¶ 6.

The Secretary respectfully requests a finding that Petitioner's debt is past due and legally enforceable, and that the stay of referral of this matter to the U.S. Department of Treasury for collection by Treasury Offset be **vacated**, so that the Secretary may proceed with Administrative Offset against Petitioner.

¹ Brian Dillon is Director of Asset Recovery Division for the U.S. Housing and Urban Development.

DISCUSSION

Petitioner does not dispute the existence of the subject debt or the fact that the debt is enforceable. Instead, Petitioner first challenges the amount of the debt owed; and second, extends an offer to arrange a repayment plan to pay in full the amount found to be owed. Petitioner contends that “My second mortgage payment was about \$130.00 a month. I would also like to point out that this started as a \$12,000.00 loan and I have paid \$16,000.00 over the past 10 years and it was at \$9340.08 and has now grown up to \$13,273.80.” *Pet’r Stat.* at 2. But, Petitioner failed to present any evidence in support of her claim that \$13,273.80 was owed.

The record shows that the amount Petitioner alleges as last owed, \$9340.08, is consistent with the amount claimed by the Secretary that is currently owed, barring add-ons for interests and administrative fees. The total owed, including add-ons, is still far less than the \$13,273.80 Petitioner contends the subject debt has “grown up to.” Without evidence to prove her claim or evidence to refute the amount claimed by the Secretary, Petitioner has failed to meet her burden of proof that the amount claimed is erroneous. 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 or unenforceable.” Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)).

However, the Secretary has successfully met his burden of proof that the alleged debt is past due and legally enforceable in the amount so claimed, and therefore the Court finds that Petitioner’s claim fails for lack of proof.

Next, Petitioner offers “to set up a repayment plan” for a monthly payment amount of \$150.00. While Petitioner may wish to negotiate repayment terms with the Department, this Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Counsel for the Secretary or Michael DeMarco, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152, extension 2859. Petitioner may also request a review of his financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

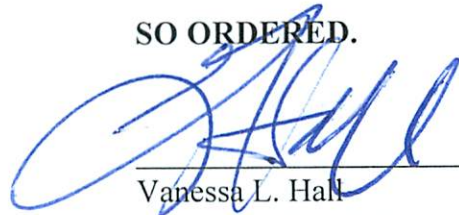
ORDER

Based on the foregoing, Petitioner remain 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.



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.