

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

In the Matter of:

Malissa Edmond,

Petitioner.

17-VH-0200-AO-077

7-210111880A

March 4, 2019

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on September 6, 2017, by Petitioner Malissa Edmond (“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 September 7, 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 17, 2017, Petitioner filed her *Statement* and additional documentary evidence in support of her position. On December 4, 2017, 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.

BACKGROUND

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720A, because of a defaulted loan that was insured against non-payment by the Secretary.

In or about June 2014, the HUD-insured primary mortgage on Petitioner’s home was

DISCUSSION

Petitioner denies that she owes the subject debt claimed by the Secretary because it was paid off at settlement. Petitioner claims that:

My realtor and I were not told of any clouds or problems with the [t]itle so I settled the sale of my home on 6/13/16 and collected the proceeds as evidence by the enclosed closing document. I never received any correspondence from Chase Mortgage, the Title Company, or HUD until I received a letter from HUD dating 7/17/17 informing me that I owed a delinquent debt of \$41,951.28. How could this be? I could not have sold my house with this debt on my record. *Petitioner's Hearing Request (Hearing Request)*, filed September 6, 2017.

Petitioner further claims that Chase Mortgage had “no record of money owed.” *Hearing Request*. As support, Petitioner introduced into evidence copies of a completed Closing Disclosure Form that reflected the payoff amount of the primary mortgage; a Closing Disclosure Form Addendum; and a Payoff Letter with attached Certificate of Satisfaction from Chase Mortgage. *Hearing Request*, Attachments.

The Court is not convinced that Petitioner has met her burden of proof. The Secretary's right to collect the alleged debt in this case emanates from the terms of the Note, not from the terms of payoff statements from the primary lender or closing disclosure forms from a title company. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). After a careful examination of the documentary evidence offered, the Court has determined that Petitioner's documentation is insufficient as proof and fails to support her claim that the subject debt is satisfied and unenforceable. Neither the Closing Disclosure Form nor Closing Disclosure Form Addendum prove that the subject debt had been satisfied. For Petitioner not to be held liable 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).

The Court further notes that, according to the Secretary:

The Closing Disclosure provided by Petitioner shows that at the closing of the sale of her home, Petitioner received sale proceeds of \$193,027.20, paid closing costs of \$115,174.19 (which included the \$98,935.64 owed to her primary lender) and received \$77,853.01 in cash. No disbursement to HUD is shown on Petitioner's Closing Disclosure form. Petitioner, however, received sufficient cash from the sale of her home to pay off her indebtedness to HUD in full. Petitioner's indebtedness to HUD remains outstanding, nevertheless. *Sec'y's Stat.*, Ex. A, *Dillon Declaration*, ¶ 7.

in default, and Petitioner was threatened with foreclosure. *Sec'y. Stat.* at ¶ 2, Ex. A, *Declaration of Brian Dillon*¹ ("*Dillon Decl.*"), ¶ 4. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current. *Id.* In exchange for foreclosure relief, on June 23, 2014, Petitioner executed a Subordinate Note ("Note") in the amount of \$41,951.28 in favor of the Secretary. *Sec'y. Stat.* at ¶ 2, Ex. B, Note.

Paragraph 4(A) of the Note cites specific events that make the debt become due and payable. One of those events is the payment in full of the primary note. *Sec'y. Stat.* at ¶ 2, Ex. B, Note at 4(A)(i). On or about June 15, 2016, the FHA insurance on Petitioner's primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full. *Sec'y. Stat.* at ¶ 4, Ex. B, Note at ¶ 4(A)(i) 85 (iii). Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the "Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410 or any such other place as [HUD] may designate in writing by notice to Borrower." *Sec'y. Stat.*, Ex. B, Note at ¶4(B)).

Petitioner failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioner's debt to HUD is delinquent. *Sec'y. Stat.* at ¶8; Ex. A, *Dillon Decl.* ¶ 5. The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. Therefore, Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$41,951.28 as the unpaid principal balance as of November 30, 2017;
- (b) \$174.75 as the unpaid interest on the principal balance at 1% per annum through November 30, 2017;
- (c) \$2,560.79 as the unpaid penalties and administrative costs as of November 30, 2017; and
- (d) Interest on said principal balance from December 1, 2017 at 1% per annum until paid.

(Id.)

A Notice of Intent to Collect by Treasury Offset dated August 21, 2017 ("Notice") was sent to Petitioner. (Id. at ¶ 6).

The Secretary respectfully requests that the Court find Petitioner's debt past due and legally enforceable.

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

Petitioner herein failed to introduce evidence of a written release, from HUD, that effectively discharged Petitioner from the debt associated with the Subordinate Note. This Court has consistently maintained 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). Accordingly, the Court finds, consistent with case law precedent, that the subject debt remains past due and enforceable because Petitioner lacks sufficient and credible proof to prove otherwise.

As a final point, Petitioner later submitted a *Statement* in which she noted that she filed a *Motion to Dismiss* in the instant case on October 30, 2017. *Petitioner's Statement*, filed November 17, 2017. The record however does not reflect that such a motion was filed and as such, the Court renders this claim moot since the Motion is not a part of the record.

ORDER

Based on the foregoing, Petitioner remains contractually obligated to pay the debt 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.