

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

In the Matter of	:	
	:	
Tresaca Hamilton,	:	18-AM-0040-AO-015
	:	
	:	7-210116010A
	:	
Petitioner,	:	July 17, 2019
	:	

DECISION AND ORDER

On November 1, 2017, Tresaca Hamilton, (“Petitioner”) filed a Request of Hearing concerning the amount, and enforceability of an alleged debt owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720A), authorizes federal agencies to use administrative wage garnishments as a mechanism for the collection of debts owed to the United States government. The regulation governing offsets can be found at 24 C.F.R. §§ 17.65-17.79 *et seq.*

The Secretary of HUD has designated the administrative judges of this Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts utilizing the administrative wage garnishment process. This Court is authorized to issue written decisions concerning whether a debt or part of a debt is past due and legally enforceable. 24 C.F.R. § 17.73.

BACKGROUND

On November 11, 2005 and March 14, 2014, Petitioner sought financial assistance from HUD to help her avoid possible foreclosure on her mortgage with her primary lender (“primary lender”). (See Secretary’s Statement (“Sec’y Stat.”), ¶ 2; Exh. A, Declaration of Kathleen M. Porter (“Porter Decl.”), ¶ 4)). HUD advanced funds to Petitioner’s primary lender through its partial claim program to bring the primary note current. (See Sec’y Stat., ¶ 3; *Id.*). Petitioner executed Subordinate Notes (“Notes”) in the amount of \$4,112.47 in November 2005 and \$26,301.62 in March 2014. (See Sec’y Stat. ¶ 4; Exh. B, Notes). Under the Notes’ terms, Petitioner was to pay the principal amount of the unpaid balance on the Notes until they were paid in full (See Exh. B, Notes). The Notes cite to specific events that could cause the remaining unpaid balance of the debt to become immediately due and payable—one of which was the termination of FHA insurance on Petitioner’s mortgage with her primary lender. (See Sec’y Stat., ¶ 5; Exh. B, ¶ 4(A)(iii)).

On or about September 2, 2015, the FHA insurance on Petitioner's primary mortgage was terminated when Petitioner's primary lender notified HUD that Petitioner agreed to a voluntary termination of the FHA insurance as part of a principal reduction program. (See Sec'y Stat., ¶ 6; Exh. A, Porter Decl., ¶ 4). Upon termination of the FHA insurance on the primary note, Petitioner was to make full payment on the Notes to HUD at the place designated in paragraph 4 of the Notes, which Petitioner failed to do. (See Sec'y Stat., ¶¶ 7, 8; Exh. B, Notes, ¶ 4).

HUD made its demand upon Petitioner to pay the amounts owed, but Petitioner failed to do so. As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$30,414.09 as the unpaid principal balance;
- b) \$379.95 as the unpaid interest on the principal balance at 1% per annum;
- c) \$1,866.25 as the unpaid penalties and administrative; and
- d) Interest on said principal balance from December 1, 2018 at 1% per annum until paid

(See Sec'y Stat., ¶ 9; Exh. A, Porter Decl., ¶ 5)

On October 16, 2017 a Notice of Intent to Collect by Treasury Offset ("Notice") was sent to Petitioner. 24 C.F.R. 17.65. (See Sec'y Stat., ¶ 10; Exh. A, Porter Decl., ¶ 6).

DISCUSSION

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A provides federal agencies with the power to pursue administrative offset of federal payments as a remedy for the collection of debts owed to the United States government. The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. 31 C.F.R. § 285.11(f)(8)(i). Under 24 C.F.R. § 17.69 (b) – (c), Petitioner must show by a preponderance of the evidence that all or part of the alleged debt is either not past due or not legally enforceable.

As evidence of the Petitioner's indebtedness, the Secretary has filed the Secretary's Statement and the sworn declaration by Kathleen M. Porter, Acting Director, Asset Recovery Division, HUD Financial Operations Center; and copies of the Notes. (See Sec'y Stat.; Exh. A, Porter Decl.; Exh. B, Notes). On the Notes, Petitioner's name, address, and signature are present. (See Exh. B, Notes). Accordingly, the Court finds that the Secretary has met his initial burden of proof.

In response to the Secretary's claim, Petitioner states her belief that the debt amount alleged by the Secretary is incorrect. (Petitioner's December Letter, ("Pet'r. Dec. Ltr."), ¶ 1.) Petitioner claims the amount owed to HUD is \$2,172.98, as indicated on her 2015 Mortgage Modification Documents ("Modification Agreement"). *Id.* Further, Petitioner states that the Notes are not past due or legally enforceable because she has not sold the subject property, refinanced the mortgage, or paid the mortgage in full. (See Sec'y Stat., ¶ 11; Pet'r Dec. Ltr., ¶ 2).

However, HUD's basis for collecting on the Notes, is not Petitioner's sale of the property, refinancing of the mortgage, or payment of the mortgage in full. Instead, HUD seeks repayment of the Notes based upon Petitioner's action on terminating the FHA insurance on Petitioner's primary mortgage, when that mortgage was modified in or around August 2015. (See Sec'y Stat., ¶ 12; Exh. A, Porter Decl., ¶ 4).

Petitioner's primary FHA-insured mortgage was held by Bank of America ("BOFA"). In or around May 2015, Petitioner entered into a loan modification program with BOFA. (See Sec'y Stat., ¶ 13). This agreement reduced the principal on Petitioner's primary mortgage from \$125,427.25 to \$49,750 and her mortgage payment from \$747.62 to \$371.35. Id. (See Pet'r Dec. Ltr.; BOFA Letter). Petitioner was advised that as part of the modification loan program she had to terminate the FHA insurance on her primary mortgage. (See Sec'y Stat., ¶ 14; Exh. C, BOFA's 8/5/2017 Letter to Petitioner). The BOFA Letter advised Petitioner of the consequences of termination of the FHA insurance and proceeding with the mortgage modification, including HUD's authorization to collect any FHA insurance paid to investors on Petitioner's behalf in order to prevent foreclosure. (See Sec'y Stat., ¶ 15; Id. at p. 2, ¶ 1). Petitioner executed the "Borrower's Consent to Voluntary Termination of FHA Mortgage Insurance". (See Sec'y Stat., ¶ 16; Exh. D).

Petitioner does not provide evidence that the Notes are not enforceable or past due in the amounts alleged by HUD. Therefore, I conclude that the Notes are now past due and legally enforceable as asserted by the Secretary.

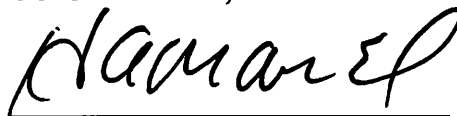
ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amounts claimed by the Secretary. It is

ORDERED that the Order imposing the Stay of Referral of this matter to the U.S. Department of the Treasury for administrative offset is **VACATED**. It is

FURTHER ORDERED that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative offset of any federal payments due to Petitioner.

SO ORDERED,



H. Alexander Manuel
Administrative Judge

APPEAL NOTICE: You have the right to move for reconsideration of this case before the HUD Office of Hearings and Appeals within 20 days of the date of this ruling or decision; or, thereafter, to reopen this case. Ordinarily, such motions will not be granted absent a showing of

new evidence that could not have been previously presented. You may also appeal this decision to the appropriate United States District Court. For wage garnishment cases, *See* 24 C.F.R. § 17.81, 31 C.F.R. § 285.11(f), and 5 U.S.C. 701, *et seq.* For administrative offset cases, *See* 24 C.F.R. § 17.73(a), and 5 U.S.C. § 701, *et seq.*