

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

In the Matter of	:	
	:	
	:	18-AM-0046-AO-016
Doris De Jesus,	:	
	:	7-21011618
	:	
Petitioner,	:	July 17, 2019
	:	

DECISION AND ORDER

On November 7, 2017, Doris De Jesus, (“Petitioner”) filed a Request for 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 offset 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 using administrative offset. 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 or about May 20, 2014, Petitioner sought financial assistance from HUD to help her avoid possible foreclosure on her FHA insured mortgage lender, which was the holder of Petitioner’s primary mortgage note (“Primary Note”). (See Secretary’s Statement (Sec’y Stat.), ¶ 3; Exh. 1, Declaration of Brian Dillon (“Dillon Decl.”), ¶ 4). Petitioner executed a Subordinate Note (“Note”) in the amount of \$44,142.08. (See Sec’y Stat. ¶ 2; Exh. 2, Note). Under the Notes’ terms, Petitioner was to pay the principal amount of the unpaid balance on the Notes until it was paid in full (See Exh. 2, Note). The Note cites to specific events that could cause the remaining unpaid balance of the debt to become immediately due and payable. (See Sec’y Stat., ¶ 4; Exh. 2, ¶ 4).

On or about June 22, 2016, the FHA insurance on Petitioner’s primary mortgage was terminated when Petitioner’s primary lender notified HUD the primary note and mortgage was paid in full. (See Sec’y Stat., ¶ 5; Exh. 1, Dillon Decl., ¶ 4). HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent and indebted to HUD. (See Sec’y Stat., ¶ 6; Exh. 1, ¶ 5).

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

- a) \$46,856.23 as the unpaid principal balance as of November 30, 2018;
- b) \$545.40 as the unpaid interest on the principal balance at 1% per annum as of November 30, 2018;
- c) \$2,627.60 as the unpaid penalties as of November 30, 2018; and
- d) \$35.33 as the unpaid administrative costs as of November 30, 2018; and
- e) Interest on said principal balance from December 1, 2018 at 1% per annum until paid

(See Sec’y Stat., ¶ 7; Exh. 1, Dillon 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., ¶ 8; Exh. 1, Dillon 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 Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center; the Novad notes and copies of the Note. (See Sec’y Stat.; Exh. 1, Dillon Decl.; Exh. 2, Note; Exh. 1-A, Novad notes). On the Notes, Petitioner’s name, address, and signature are present. (See Exh. 2, Note). Accordingly, the Court finds that the Secretary has met his initial burden of proof.

Petitioner states that the she is not obligated to repay the debt because she was not advised that the debt was due upon refinance of her primary mortgage nor did she sign anything making her responsible for it. (See Petitioner’s Email, dated June 27, 2018). However, the Note clearly has Petitioner’s name, date, address, and signature. (See Exh. 2, Note). Petitioner provides no evidence supporting her conclusion that she did not sign the Note. Further, HUD’s debt servicing contractor, Novad, shows Petitioner personally requested a payoff amount for the Note on June 22, 2016. (See Sec’y Stat., ¶ 9; Exh. 1-A). The Novad notes do not indicate that the loan was forgiven as Petitioner suggests in her June 27, 2018 email. *Id.* Petitioner has also failed to provide evidence that the debt was repaid to HUD or that she was released from her obligations pursuant to the Note. *Id.*

Petitioner has the burden of producing evidence which demonstrates that the claimed debt is not past due or legally enforceable. (See Micheal Cook, HUDBCA No. 87-2782-H307 (Aug. 11, 1988). Petitioner has failed to meet that burden. Therefore, the Court concludes 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 subject of this proceeding to be legally enforceable against Petitioner in the amount 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 payment due to Petitioner.

SO ORDERED,



H. Alexander Manual
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.*