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

In the Matter of	:	
	:	18-AM-0086-AO-024
Dolores A. Eisele,	:	
	:	7-807887630A
	:	
Petitioner,	:	July 10, 2019
	:	

DECISION AND ORDER

On December 21, 2017, Delores A. Eisele, ("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 cased 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 August 16, 2013, Petitioner executed a Manufactured Property Improvement Program Loan ("Note"). The Note was in the amount of $7,500. (*See Secretary's Statement ("Sec'y Stat.")* ¶ 2; Exh. 1, Note). The Note was insured against nonpayment by the Secretary pursuant to Title 1 of the National Housing Act. (*See Sec'y Stat.*, ¶ 3; Declaration of Brian Dillon ("Dillon Decl."), Director of the Asset Recovery Division of HUD's Financial Operations Center, Exh. 2, ¶¶ 2-3). The Michigan State Housing Authority assigned the Note, signed by Petitioner, to HUD. (*See* Dillon Decl., ¶ 3). The Note was assigned after default by Petitioner under the Power of Attorney provided under the regulations governing Title I Insurance Programs. *Id.*

A Notice of Intent to Collect by Treasury Offset ("Notice") dated December 26, 2016 was mailed to Petitioner. (*See Sec'y Stat.*, ¶ 6; Exh. 2, Dillon Decl., ¶ 5). In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded an opportunity to enter into a written repayment agreement under terms agreeable to HUD. However, Petitioner did not agree to the repayment terms. *Id.* HUD has attempted to collect the amount due under the Note, but Petitioner remains in default. (*See Sec'y Stat.*, ¶ 5; Exh. 2, ¶ 4).

As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

a) $5,932.02 as the unpaid principal balance as of May 31, 2018;

b) $24.70 as the unpaid interest on the principal balance at 1% per annum through May 31, 2018;

c) $497.84 as the unpaid penalties and administrative as of May 31, 2018; and

d) Interest on said principal balance from June 1, 2018 at 1% per annum until paid

(*See Sec'y Stat.*, ¶ 7; Exh.2, Dillon Decl., ¶ 4)

DISCUSSION

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A provides federal agencies with 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; and copies of the Notes. (*See Sec'y Stat.*; Exh. A, Dillon Decl.; Exh. B, Note). On the Note, Petitioner's name, address, and signature are present. (See Exh. B, Note). The Secretary has also provided Portioner's Certificate of Manufactured Home Ownership ("Ownership Certificate"), Exh. 2-A and Program Improvement Program Loan Application ("Loan Application"), Exh. 2-B. Accordingly, the Court finds that the Secretary has met his initial burden of proof.

At issue, Petitioner argues the following:

1. Upon foreclosure by a senior lien holder, Michigan law extinguishes the legal interests of junior lien holders;
2. The contractor who authorized the loan made misrepresentations in connection with the loan, and therefore should not be allowed to collect on equitable grounds;
3. Petitioner was not unjustly enriched and did not receive the benefit of the bargain; and
4. HUD stands in the shoes of a junior mortgagee who did not redeem its interests upon foreclosure by the senior lien holder

(*See Petitioner's Statement and Evidence of Unenforceability ("Petitioner's Statement")*, ¶ 3-5)

In response to Petitioner's first argument, the Secretary points out that the debt which is subject of this proceeding was not secured by a lien, and that the debt arises from an unsecured home improvement loan. (*See Amended Secretary's Supplemental Statement* ("*Amended Sec'y Supp. Stat.*"), ¶ 3; *Sec'y Stat.*, ¶ 7; Exh. 2, Dillon Decl., ¶ 6). The Secretary further argues that 24 C.F.R. § 201.24(a)(3) explicitly provides that "manufactured home improvement loans need not be secured". *Id.* Petitioner does not provide any evidence to prove that the apparent foreclosure of Petitioner's home by Vanderbuilt had any impact on Petitioner's obligations under, and liability for, the unsecured home improvement loan that she received. *Id.* Because the Secretary was not required to place a lien against Petitioner's property, and did not do so, this dispenses with Petitioner's fourth argument as well. HUD could not be required to stand in the shoes of a junior mortgagee that failed to redeem its interests upon foreclosure by the senior lien holder, because HUD was never required to file any lien in the first place. (*See Amended Sec'y Supp. Stat.*, ¶ 4). (emphasis added) (*Petitioner's Statement*, ¶ 5).

Petitioner's argument that the contractor who authorized the loan made misrepresentations in connection with the loan is similarly unsupported. Petitioner fails to come forward with documentary evidence from the contractor who allegedly made misrepresentations in connection with the loan, or other documentation to prove that Petitioner raised these alleged misrepresentations to HUD or the contractor prior to the beginning of proceedings in this case. This Court is unwilling to make factual findings based solely on uncorroborated statements or testimony

Petitioner's third argument is that Petitioner was not unjustly enriched and did not receive the benefit of the bargain. (*See Petitioner's Statement*, ¶ 4). The Secretary cites Fodale v. Waste Mgmt. of Michigan, Inc., which describes the doctrine of unjust enrichment as an equitable remedy, used to request that a court imply the existence of a contract in circumstances where one does not otherwise exist; for the purpose of preventing one party from receiving and retaining a benefit from another party, resulting in inequity. *Fodale v. Waste Mgmt. of Michigan, Inc.*, 271 Mich. App. 11, 36, 718 N.W.2d 827 (2006). (*See Amended Sec'y Supp. Stat.*, ¶ 6). The Secretary asserts that application of the equitable doctrine is inapposite here, where Petitioner is the one who has failed to perform under the Note, and has failed to obtain a release by HUD for the home improvement funds that she received and utilized. (*See Amended Sec'y Supp. Stat.*, ¶ 6). Petitioner acknowledged that home improvements were made, and that Petitioner's family later decided to move her away from the home for unrelated medical reasons. (*See Petitioner's Statement*, ¶ 2).

Petitioner's claim that she failed to receive the "benefit of the bargain" is similarly misplaced. Petitioner has not substantially performed under the terms of the Note. Indeed, Petitioner has failed to prove that she has repaid any amounts under the Note, whatsoever. Thus, HUD is the aggrieved party who is entitled to be placed in the same financial position that would have resulted if the contract had been fully performed. *E. Allen Farnsworth, Contracts*, § 12.1 (1982); *McCormick Handbook on the Law of Damages* (1935). (*See Amended Sec'y Supp. Stat.*, ¶ 6). The Court agrees with the Secretary that Petitioner is the breaching party by failing to repay HUD. Petitioner has provided no evidence to prove that she repaid any funds under the Note to HUD. (*See Amended Sec'y Supp. Stat.*, ¶ 6).

The Court concludes based on the evidence that HUD is entitled to repayment from Petitioner. Petitioner failed to provide documentation to support her arguments. Petitioner does not provide evidence that the Note is 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.

If Petitioner seeks to negotiate a repayment schedule with the Department, she should be aware that this Court only has the authority to make a "determination of whether the debt is enforceable and past due." (*See* Edgar Joyner Sr., HUDBCA No. 04-A-CH-EE052 (June 15, 2005)). The Court does not have the authority to establish "a debtor's repayment amount or a schedule of payments." *Id.* As such, while Petitioner may wish to negotiate repayment terms with the Department, this Court is not authorized to "extend, recommend or accept any payment plan or settlement offer on behalf of the Department." *Id.* If Petitioner wishes to discuss a repayment plan, she may discuss the matter with the Director of the HUD Financial Operations Center or write to HUD Financial Operations Center, 50 Corporate Circle, Albany, NY 12203-5121.

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, imposed on January 8, 2018, 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 unless you can demonstrate that you have new evidence to present that could not have been previously presented. You may also appeal this decision to the appropriate United States District Court. For wage garnishments cases, See 24 C.F.R. § 17.81, 31 C.F.R. § 285.119f), 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*.