

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

In the Matter of:

**David and Sandra L. MacDonell,**

Petitioners.

18-VH-0029-AO-010

7-210116540A

June 13, 2019

**DECISION AND ORDER**

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on November 1, 2017, by David and Sandra L. MacDonell (“Petitioners”) 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”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. 3720A), authorizes federal agencies to use administrative offsets as a mechanism for the collection of debts allegedly owed to the United States government.

**JURISDICTION**

The Office of Hearings and Appeals has jurisdiction to determine whether Petitioners’ 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 November 2, 2017, the Court stayed the issuance of an administrative offset of any federal payment due to Petitioners until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral* (Notice of Docketing) at 2. On April 26, 2018, Petitioners filed their Statement along with documentary evidence in support of her claim. On June 13, 2018 the Secretary filed a *Secretary’s Statement*, along with documentary evidence, in support of his position. This case is now ripe for review.

## FINDINGS OF FACT

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

In or about November 2012, the HUD-insured loan on ts' home was in default, and Petitioners were threatened with foreclosure. *Sec'y. Stat., Ex. A, Declaration of Brian Dillon (Dillon Decl.)*,<sup>1</sup> ¶ 4. To prevent the lender from foreclosing, HUD advanced funds to Petitioners' lender to bring the primary note current. *Id.* In exchange for foreclosure relief, on April 23, 2013, Petitioners executed a Subordinate Note ("Note") in the amount of \$52,179.55 in favor of the Secretary. *Sec'y. Stat., ¶¶ 3, 4; Ex. A, Dillon Decl., ¶ 4; 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 ¶ 5, Ex. B, Note at 4(A)(i)*. On or about June 30, 2015, the FHA insurance on Petitioners' primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full. *Sec'y. Stat. at ¶ 6, Ex. B, Note at ¶ 4(A)(i) & (iii)*. Upon payment in full of the primary note, Petitioners were 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)*.

Petitioners failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioners' 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 Petitioners but has been unsuccessful. Therefore, Petitioners are justly indebted to the Secretary in the following amounts:

- (a) \$52,179.55 as the unpaid principal balance as of May 30, 2018;
- (b) \$391.23 as the unpaid interest on the principal balance at 1% per annum through May 30, 2018;
- (c) \$3,176.54 as the unpaid penalties and administrative charges on the principal balance through May 30, 2018; and
- (d) interest on said principal balance from June 1, 2018 at 1% per annum until paid.

*Sec'y. Stat. ¶ 9; Dillon Decl., ¶ 5.*

A Notice of Intent to Collect by Treasury Offset dated October 16, 2017 ("Notice") was mailed to each Petitioner. *Sec'y. Stat. ¶ 10; Dillon Decl., ¶ 6.*

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<sup>1</sup> Brian Dillon is the Director of the Asset Recovery Division of HUD's Financial Operations Center.

## DISCUSSION

Petitioners claim that they do not owe the debt because it was allegedly paid in full when their mortgage was refinanced in June 2015. Petitioners further claims that:

Enclosed you will find a copy of our refinances. It shows that our mortgage was paid in full. Which we have being [sic] paying our new mortgage. If you were not paid from Bank of America[,] you have to take it up with them not us. Every time we have done a refinance there have been title searches done and as far as we our concern, all of our past loans have been paid. Title companies have found nothing to what you are asking off[.]

*Petitioners' Documentary Evidence (Petr's Evidence)*, filed April 26, 2018.

In support of their argument, Petitioners introduced into evidence copies of a *Letter of Debt Satisfaction* from RoundPoint Mortgage dated February 10, 2017; and a *Satisfaction of Mortgage* from Mortgage Electronic Registration Systems Inc./Embrace Home Loans.

After reviewing Petitioners' documentary evidence, their record of evidence remains insufficient as proof of their claim that the subject debt does not exist because it was paid in full upon refinancing their loan. For Petitioners not to be held liable for the full amount of the debt, there must be either a release in writing from the former lender explicitly relieving Petitioners of their 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). Petitioners have failed to submit any documentary evidence that demonstrates that the subject debt was paid in full. First, there is no record of a written release directly from HUD that discharges Petitioners from the debt associated with the Subordinate Note; and second, there is no proof of Petitioners' exchange of valuable consideration in satisfaction of the subject debt. So, the subject debt has not been satisfied.

In addition, neither the *Letter of Debt Satisfaction* from RoundPoint Mortgage, nor the *Satisfaction of Mortgage* from the Mortgage Electronic effectively discharges Petitioners from the debt associated with the Subordinate Note in this case. Instead, the documents provided by Petitioners refer only to the payment status of the primary mortgage.

Petitioners herein have failed to meet their burden of proof by a preponderance of the evidence. The evidence offered for the Court's review failed to show that Petitioners were released from their obligation to pay the subject debt, and also failed to prove that valuable consideration was exchanged in satisfaction of the debt claimed by HUD. As a result, the Court is unable to assess the credibility of Petitioners' claim of full payment based on the evidence presented. It is well established 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). Therefore, the Court must find, consistent with case law precedent, that Petitioners remain contractually obligated to pay the debt so claimed by the Secretary.

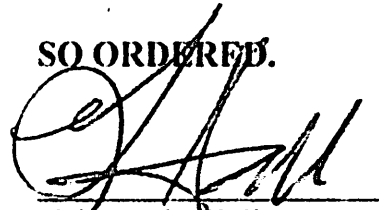
**ORDER**

Based on the foregoing, Petitioners remain legally 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.

A handwritten signature in black ink, appearing to read 'Vanessa L. Pall', is written over a horizontal line. The signature is stylized and somewhat cursive.

Vanessa L. Pall  
Administrative Judge

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**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. s