

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

In the Matter of:

**Michael L. Britton,**

Petitioner.

18-VH-0164-AO-052

7-807991250A

November 18, 2019

**DECISION AND ORDER**

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on April 18, 2018, by Petitioner Michael L. Britton (“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”). 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 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 April 18, 2018, 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 June 8, 2018, Petitioner filed his *Statement* and documentary evidence in support of his position. On July 24, 2018, 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.

## FINDINGS OF FACT

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.

On or about August 21, 2012, Michael L. Britton (Petitioner) executed a Manufactured Home Retail Installment Contract and Disclosure Statement (Note) in the amount of \$47,185.37. *Sec'y. Stat.* at ¶ 2, Ex. 1, Note. This Note was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act. *Sec'y. Stat.* ¶ 4, Ex. 2, *Declaration of Brian Dillon*<sup>1</sup> (“*Dillon Decl.*”), ¶¶ 2-3.

Petitioner failed to make payments as agreed and the Note was subsequently assigned to HUD. *Sec'y. Stat.* at ¶ 4, Ex. 1, Note, Ex. 2, *Dillon Decl.* ¶ 3.

HUD has attempted to collect the amount due under the Note, but Petitioner remains in default. A Notice of Intent to Collect by Treasury Offset dated March 26, 2018 was mailed to Petitioner. *Sec'y. Stat.* at ¶ 6; Ex. 2, *Dillon Decl.* ¶ 5. Petitioner is justly indebted to the Secretary in the following amounts:

- a) \$14,185.00 as the unpaid principal balance as of June 30, 2018;
- b) \$612.16 as the unpaid interest on the principal balance at 1.0% per annum through June 30, 2018;
- c) \$922.45 as the unpaid penalties and administrative costs as of June 30, 2018; and,
- d) interest on said principal balance from July 1, 2018, at 1.0% per annum until paid.

*Sec'y. Stat.* at ¶ 7; Ex. 2, *Dillon Decl.* ¶ 4.

## DISCUSSION

Petitioner challenges the enforcement of the subject debt because he contends that he decided to cease making payments on the debt because of unhealthy living conditions of the property associated with the subject debt. More specifically, Petitioner contends that:

**It is my intent to provide a reasonable explanation as to why I feel the debt insured by FHA associated with the address 162 Stagecoach Circle, Copperas Cove, Texas 76522 should be discharged without any further suffering to me or my family due to the unhealthy and unacceptable living conditions associated with this property. (Emphasis in original); *Pet'r's Statement* at 1.**

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

In support of his position, Petitioner offered as evidence copies of correspondence between Petitioner and the Texas Commission on Environmental Equality (TCEE); related documentation in support of the Commission's assessments; and an Agreed Order issued by TCEE. *Pet'r's Doc. Evidence* filed June 8, 2018.

After reviewing the evidence offered by Petitioner, the Court has determined that the evidence presented does not meet Petitioner's burden of proof that he should be released from his contractual obligation to pay the debt that is the subject of this proceeding. Earlier in this Decision, and in the *Notice of Docketing* issued to Petitioner on April 18, 2018, Petitioner was informed that this Court "has jurisdiction to determine **whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. §§ 17.61 et. seq.**" (Emphasis added) This means that this Court, by law, cannot decide safety hazard issues unrelated to the enforcement of the terms of this contract because such determination would be beyond the scope of the jurisdiction of this Court.

In this case, the Secretary's right to collect the subject debt, upon default, emanates from the terms of the contract [herein the Note or Manufactured Retail Installment Contract] between Petitioner and HUD. See Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). Petitioner defaulted in this case. For Petitioner to be released from his obligation to pay, he would have to produce a copy of a release in writing that he received directly from the former lender [herein HUD] that states explicitly that Petitioner was relieved from his obligation to pay, or Petitioner must otherwise produce evidence of "some valuable consideration accepted by the lender" that indicated HUD's intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). The record of evidence does not reflect that Petitioner has provided a copy of a release or proof of valuable consideration, so Petitioner's obligation to pay remains intact.

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 against Petitioner due to lack of sufficient and credible proof.

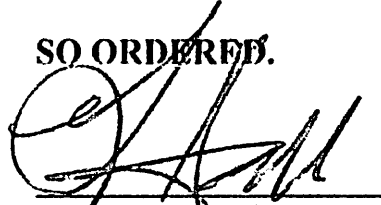
### **ORDER**

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 on April 18, 2018 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 to the extent required by law.

**SO ORDERED.**

A handwritten signature in black ink, appearing to read 'Vanessa L. Hall', written over a horizontal line.

Vanessa L. Hall  
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.