

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

In the Matter of:

Shalese Simpson,

Petitioner.

18-VH-0166-AO-054

7-210124620A

November 27, 2019

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on April 23, 2018, by Petitioner Shalese Simpson (“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 23, 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 7, 2018, Petitioner filed her Statement along with documentary evidence in support of her position. On May 1, 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 March 2015, the HUD-insured loan on Petitioner's home was in default, and Petitioner was threatened with foreclosure. *Secretary's Statement (Sec'y. Stat.)* ¶ 2.

As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's lender to bring the primary mortgage current. *Sec'y. Stat.* ¶ 2, Ex. A, *Declaration of Brian Dillon ("Dillon Decl.")*¹, ¶ 4. In exchange for foreclosure relief, on March 21, 2015, Petitioner executed a Partial Claims Promissory Note (Note) in the amount of \$48,524.62 in favor of the Secretary. *Sec'y. Stat.* ¶ 4, Ex. A, *Dillon Decl.* ¶ 4.

Paragraph 3(A) of the Note cites specific events that make the debt become due and payable. *Sec'y. Stat.*, ¶ 5; Note, at 1, ¶ 4. One of those events is the payment in full of the primary note. *Id.* On or about July 25, 2017, the FHA insurance on Petitioner's primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full. *Sec'y. Stat.*, ¶ 6; Ex. A, *Dillon Decl.*, ¶ 4.

Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the "Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 2488 E 81st St., Suite 700, Tulsa, OK 74137 or any such other place as [HUD] may designate in writing by notice to Borrower." *Sec'y. Stat.*, ¶ 5; Note, at 1, ¶ 3 (A). Petitioner failed to make payment on the Note at the place and in the amount as specified. Consequently, Petitioner's debt to HUD is delinquent. *Sec'y. Stat.*, ¶ 8; Ex. A, *Dillon Decl.*, ¶ 5.

The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. *Sec'y. Stat.*, ¶ 9; Ex. A, *Dillon Decl.*, ¶ 5. Therefore, Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$48,524.62 as the unpaid principal balance as of February 28, 2018;
- (b) \$121.26 as the unpaid interest on the principal balance at 1% per annum through March 30, 2018; and
- (c) interest on said principal balance from April 1, 2018 at 1% per annum until paid.

Sec'y. Stat. ¶ 9; *Dillon Decl.*, ¶ 6.

A Notice of Intent to Collect by Treasury Offset dated February 19, 2019 was mailed to Petitioner. *Sec'y. Stat.* ¶ 10; *Dillon Decl.*, ¶ 7. The Secretary requests that the Court find Petitioner's debt past due and legally enforceable.

DISCUSSION

Petitioner claims that she does not owe the debt because the subject debt was discharged by bankruptcy. Petitioner further claims:

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

Please be advised that I received a bankruptcy discharge under Chapter 7 through the US Bankruptcy Court- Western District of North Carolina under case # 15-31521. Included with this letter please find my bankruptcy discharge and cease all collection activities against me since it is a violation of my rights under bankruptcy.

As support, Petitioner offered as evidence copies of an *Order of Discharge* from the United States Bankruptcy Court for the Western District of North Carolina; a *Payoff Statement* from Wells Fargo; a *Motion to Determine Secured Claims of Wells Fargo*; and an *Order Determining Secured Claims of Wells Fargo and Cancelling Liens Upon Payment of Claims* from the United Bankruptcy Court from the Western District of North Carolina along with related documentation. *Hearing Request*, Attachment; *Petitioner's Statement (Pet'r's Doc. Evid.)*, Attachments.

After reviewing the evidence offered by Petitioner, the Court has determined that Petitioner's claim fails for lack of proof. First, the *Payoff Statement* from Wells Fargo supports the payoff of the primary mortgage, not the subject debt. Second, the *Motion to Determine Secure Claims* and *Order Determining Secured Claims* are separate and distinct issues that are unrelated to the collection efforts of the subject debt in this case. Third, the *Order of Discharge* dated January 8, 2016 pre-dates the maturity date of July 25, 2017 associated with the subject debt. *See Hearing Request*, Attachment. It is impossible to reconcile how a debt that was not yet in existence could have possibly been discharged before it even existed. HUD also was not listed as a scheduled creditor in any of the documentation submitted by Petitioner as proof of discharge, likely because the debt had not yet become due. Finally, the property associated with the subject debt was sold and proceeds distributed, but HUD was not included, again likely because the debt owed to HUD had not become due until July 2017.

In addition, there is no proof in the record that Petitioner took the necessary and final step of listing HUD as a scheduled creditor, a step that would have been crucial in order for Petitioner to establish the credibility of the argument that HUD was covered in the bankruptcy. As a result, the record is incomplete and lacks the necessary proof to equip the Court to determine credibility. Without sufficient proof to refute or rebut the evidence presented by the Secretary, the Court must find that Petitioner remains contractually obligated to pay the subject debt.

Finally, should Petitioner not wish to be held responsible for the full amount of the subject debt, there must be either a release in writing from the former lender explicitly relieving Petitioner's 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). Because Petitioner has not yet offered documentary evidence that demonstrates payment in full of the subject debt, the Court again finds that Petitioner has not met her burden of proof. 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, consistent with case law precedent, the Court further finds that Petitioner remains contractually obligated to pay the subject debt in the absence of proof of release or satisfaction.

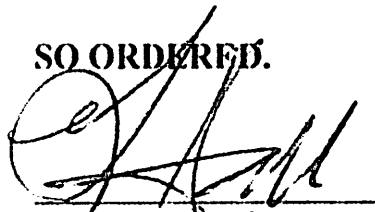
ORDER

Based on the foregoing, Petitioner remains contractually obligated to pay the subject debt in the amount so claimed by the Secretary.

The *Order* imposing the stay of referral of this matter on April 23, 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. Pall', is written over a horizontal line. The signature is stylized and cursive.

Vanessa L. Pall

Administrative Judge

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.