

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

In the Matter of:

**David Crescenzi,**

Petitioner.

19-VH-0012-AO-002

7-210125380A

October 3, 2019

**DECISION AND ORDER**

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on October 12, 2018 by Petitioner David Crescenzi (“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 October 12, 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 October 23, 2018, the Secretary filed a *Secretary’s Statement*, along with documentary evidence, in support of his position. To date, Petitioner has failed to file sufficient evidence in support of his position I compliance with the Court’s orders. This case is now ripe for review.

## BACKGROUND

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 January 2014, the HUD-insured loan on Petitioner's home was in default, and Petitioner was threatened with foreclosure. *Secretary's Statement*, (*Sec'y's Stat.*), ¶ 2, Ex. A, *Declaration of Brian Dillon* ("*Dillon Declaration*")<sup>1</sup>, ¶ 4. To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current. *Id.*

In exchange for foreclosure relief, Petitioner executed a Subordinate Note ("Note") dated January 10, 2014, in the amount of \$14,881.48 in favor of the Secretary. *Sec'y's Stat.* ¶ 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's Stat.* ¶ 5, Ex. B, Note. On or about September 12, 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's Stat.* ¶ 6, Ex. B, Note, ¶ 4(A)(i) (1) & (3); Ex. A, *Dillon Declaration* at ¶ 4.

Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the "**Office of 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.**" [emphasis in original]. *Sec'y's Stat.* ¶ 6, Ex. B, Note, ¶ 4(A). Petitioner failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioner's debt to HUD is delinquent. *Sec'y's Stat.* ¶ 8, Ex. A, *Dillon Declaration* at ¶ 5.

The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. Therefore, Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$14,881.48 as the unpaid principal balance as of September 30, 2018;
- (b) \$99.20 as the unpaid interest on the principal balance at 1% per annum through September 30, 2018;
- (c) \$360.13 as the unpaid penalties and administrative charges on the principal balance through September 30, 2018; and
- (d) interest on said principal balance from October 1, 2018 at 1% per annum until paid.

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

*Sec'y's Stat.* ¶ 9, Ex. A, *Dillon Declaration* at ¶ 5.

A Notice of Intent to Collect by Treasury Offset dated March 19, 2018 ("Notice") was mailed to Petitioner. *Sec'y's Stat.* ¶ 9, Ex. A, *Dillon Declaration* at ¶ 6.

The Secretary now respectfully requests that the Court find Petitioner's debt past due and legally enforceable. *Sec'y's Stat.* ¶ 10, Ex. A, *Dillon Declaration* at ¶ 7.

### **DISCUSSION**

Petitioner claims that he does not owe the debt because the Satisfaction of Mortgage released him from his obligation to pay the subject debt. According to Petitioner, the debt owed pursuant to HUD's Note was included in the payoff made to Petitioner's first lienholder, EverBank, N.A., along with the release of Petitioner from his Loan Modification Agreement and Home Affordable Modification Agreement between Petitioner and HSBC Bank of USA. *Petitioner's Documentary Evidence (Petr's Doc. Evid.)*, filed December 13, 2018. As support for Petitioner's position that the subject debt has been released, Petitioner introduced into evidence copies of the Satisfaction of Mortgage dated October 16, 2017; letters and email communications between Petitioner and EverBank staff regarding the release of the subject debt; the Subordinate Mortgage associated with the subject debt; and, the Home Affordable Modification Agreement.

In response, the Secretary contends that Petitioner has failed to provide any evidence that controverts the existence, amount, and validity of the debt. The Secretary further contends that "The Satisfaction of Mortgage submitted by Petitioner was issued by 'HSBC Bank USA as Trustee by and through TIAA, FSB dba EverBank its Attorney in Fact' and it only references Petitioner's primary FHA-insured mortgage dated April 16, 1998. The Satisfaction of Mortgage itself does not reference the January 10, 2014 Note or Subordinate Mortgage that Petitioner executed in favor of HUD." *Sec'y's Stat.* ¶ 14, Ex. A, *Dillon Declaration* at ¶ 7. Moreover, the Secretary maintains that:

EverBank has no authority to issue a mortgage satisfaction purporting to vitiate Petitioner's indebtedness to HUD. Therefore, neither the Satisfaction of Mortgage issued by EverBank, nor the letter attached thereto attempting to make the mortgage satisfaction applicable to HUD's Subordinate Mortgage by reference, are proof that Petitioner's indebtedness to HUD has been satisfied.

*Sec'y's Stat.* ¶ 15, Ex. A, *Dillon Declaration* at ¶ 7.

Finally, the Secretary concludes that "HUD has received no payment on the Note signed by Petitioner and HUD has not released its mortgage, which is secured by Petitioner's former home located at 5079 North 34<sup>th</sup> Avenue, St. Petersburg, FL 33710," and that the Pinellas County, Florida Clerk's records reveal that HUD's Subordinate Mortgage is still recorded against the subject property as unsatisfied. *Sec'y's Stat.* ¶¶ 16-17, Ex. A, *Dillon Declaration* at ¶ 7.

The Secretary's position is correct. The Secretary's right to collect the subject debt in this case emanates from the terms of the Subordinate Note. See Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). "[I]f satisfaction of a senior deed of trust prevents a junior trust holder from enforcing a junior trust deed on the same real property, the junior trust holder may collect the debt, now unsecured, by initiating collection efforts based on the obligations in the loan note." Mitchell and Rosalva Fajjo, HUDBCA No. 99-C-CH-Y200 at 3 (March 20, 2000). Here, Petitioner became contractually obligated to pay the debt when he signed the Note and promised to pay the principal sum of the subject debt to the Lender, therein identified as the Secretary of Housing and Urban Development. *Sec'y's Stat.* ¶ 13, Ex. B, Note, ¶¶ 1-2. As the junior trust holder, HUD may initiate collection efforts in accordance with the terms of the Note because the Primary Note has been paid in full.

For Petitioner not to be held liable for the full amount of the debt, there must either be evidence of 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). In this case, Petitioner has failed to produce sufficient evidence of a written release directly from HUD that discharges Petitioner for the debt associated with the Note. He has also failed to produce evidence of valuable consideration paid to HUD in satisfaction of the subject debt that would otherwise render this debt unenforceable. The only evidence that was offered by Petitioner merely proves satisfaction of the primary lien and is deemed by the Court to be insufficient as proof of satisfaction of, or release from, the debt that is the subject of this proceeding.

Therefore, the Court finds that Petitioner's claim that the subject debt was satisfied fails for lack of proof, and further finds that Petitioner remains contractually obligated to pay the debt amount so claimed by the Secretary.

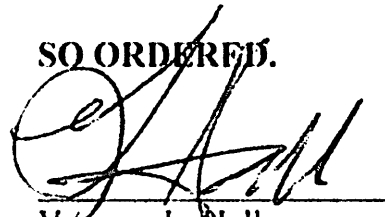
### **ORDER**

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 October 12, 2019 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. 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.