

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

In the Matter of:

Shad Saromines,

Petitioner.

19-VH-0063-AO-025

7-210143000A

April 22, 2019

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on February 8, 2019, by Petitioner Shad Saromines (“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 February 8, 2019, 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 February 8, 2019, Petitioner filed his Hearing Request along with the necessary documentary evidence in support of his claim. Petitioner’s *Request for Hearing (Hearing Request)*. On April 17, 2019, 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 FACTS

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 September 2013, the HUD-insured primary mortgage on Petitioner's home was in default, and Petitioner was threatened with foreclosure. *Sec'y. Stat.*, Ex. A, *Declaration of Brian Dillon (Dillon Decl.)*,¹ ¶ 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, on September 19, 2013, Petitioner executed a Subordinate Note ("Note") in the amount of \$65,849.09 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 29, 2018, 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.* at ¶ 6, Ex. B, Note at ¶ 4(A)(i) & (iii)). 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, 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)).

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. Stat.* at ¶ 8; Ex. A, *Dillon Decl.* ¶ 5. The Secretary has made efforts to collect this debt from Petitioner but has been unsuccessful. Therefore, as of March 31, 2019, Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$65,837.69 as the unpaid principal balance;
- (b) \$274.20 as the unpaid interest on the principal balance at 1% per annum;
- (c) \$4,067.98 as the unpaid penalties and administrative costs; and
- (d) Interest on said principal balance from April 1, 2019 at 1% per annum until paid.

Sec'y. Stat. at ¶ 8; Ex. A, *Dillon Decl.* ¶ 5.

A Notice of Intent to Collect by Treasury Offset dated December 10, 2018 ("Notice") was sent to Petitioner. *Id.* at ¶ 6.

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

The Secretary respectfully requests that the Court find Petitioner's debt past due and legally enforceable. *Sec'y. Stat.* at ¶ 17.

DISCUSSION

Petitioner claims that she does not owe the debt because it was allegedly paid off when her home was sold. Petitioner more specifically claims that:

All loans were to be paid off through Old Republic Title Company of Nevada. The property at 8808 Moreno Mountain Avenue, Las Vegas, Nevada 89178, Closed and all debts were to be satisfied through Old Republic Title Company of Nevada, at the close of escrow. As ALL balances were sent to Chase and "closing of escrow is pending clearance of Deeds of Trust items #32 and 33" said by Carolyn Vennettilli on June 18, 2018 (EXHIBIT B).

This reputable title company had said at time of closing June 28, 2018, that they submitted the demands as referenced. It is not my fault that they did not do their job. Therefore, I should not be held liable after maintaining the proper title insurance coverage and expecting Old Republic to properly complete the close of escrow.

Petitioner's *Hearing Request* at 1.

As support, Petitioner offered into evidence copies of the *Commitment to Insure from Old Republic Title Company of Nevada* to Petitioner along with accompanying attachments; and email communications from Old Republic Title Company regarding the closing of escrow pending clearance of certain deeds of trust.

After a thorough examination of Petitioner's documentary evidence, the Court has determined that Petitioner has not met his burden of proof. The record of evidence is insufficient and does not prove that Petitioner has been released from his contractual obligation to pay the subject debt. This Court has consistently maintained that "[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 Fraijo, HUDBCA No. 99-C-CH-Y200 at 3 (March 20, 2000); John Bilotta, HUDBCA No. 99-A-CH-Y258 (December 29, 1999) (citing Kimberly S. (King) Thede, HUDBCA No. 89-4587-L74 (April 23, 1990)). The threat of foreclosure does not relieve Petitioner of his obligation to pay the remaining balance on a loan in default. Marie O. Gaylor, HUDBCA No. 03-D-NY-AWG04 (February 7, 2003); Theresa Russell, HUDBCA No. 87-2776-H301 (March 24, 1988).

Petitioner herein became legally responsible for the debt when he signed the Note. For Petitioner 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 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 submit any documentary evidence that substantiates payment in full of the subject debt either by a written release directly from HUD discharging Petitioner, or by valuable consideration paid to HUD in satisfaction of the same.

Because Petitioner has failed to produce either evidence of a written release from her obligation to pay the subject debt, or of valuable consideration paid to HUD in satisfaction of the subject debt, the Court finds that Petitioner has failed to meet 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, the Court must determine, consistent with case law precedent, that Petitioner remains contractually obligated to pay the debt so claimed by the Secretary.

Next, Petitioner claims hardship by stating that, “In closing, after my hardship I could not get back on my feet hence the reason; [sic] I had to sell the property to move forward. I do not have the money to pay this demand for an error made on behalf of this very reputable title company. Your consideration in this regard is appreciated.” This Office acknowledges Petitioner’s claim of financial hardship, but the law provides “unfortunately, in administrative offset cases claims of financial hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past-due and enforceable.” Edgar Joyner, Sr., HUDBCA No. 04-A-CH-EE052 (June 15, 2005); Anna Filiziana, HUDBCA No. 95-A-NY-T11 (May 21, 1996); Charles Lomax, HUDBCA No. 87-2357-G679 (February 3, 1987).

No regulation or statute currently exists that permits financial hardship to be considered by the Court as a basis for determining whether a debt is past-due and enforceable in cases involving debt collection by means of administrative offset. Thus, consistent with case law precedent and statutory limitations, the Court finds that financial hardship cannot be considered as a defense in this case because the debt owed by Petitioner is sought to be collected by means of administrative offset.

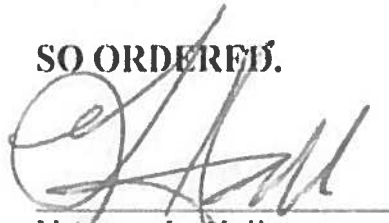
ORDER

Based on the foregoing, Petitioner remains 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. Hall', written over a horizontal line.

Vanessa L. Hall
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.