

In the Matter of:

**Hedieh Rezai,**

Petitioner

HUDBCA No. 04-A-NY-EE016  
Claim No. 7-70853056-0

Hedieh Rezai  
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Pro se

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For the Secretary

**DECISION AND ORDER**

Petitioner was notified by Due of Process Notice that, pursuant to 31 U.S.C. § 3720A, the Secretary of the U.S. Department of Housing and Urban Development ("HUD") intended to seek administrative offset of any Federal payments due to Petitioner in satisfaction of a delinquent and legally enforceable debt allegedly owed to HUD. The claimed debt has resulted from a defaulted loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act. (12 U.S.C. § 1703).

Petitioner has made a timely request for a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD. The Administrative Judges of the Board have been designated to conduct a hearing to determine whether the debt allegedly owed to HUD is legally enforceable. (24C.F.R. § 17.152(c)). As a result of the

Petitioner's request, referral of the debt for offset was temporarily stayed by the Board.

### **Summary Of Facts And Discussion**

On August 13, 1992, Petitioner executed and delivered to Interstate Plus Mortgage an installment note in the amount of \$17,500.00 for a property improvement loan that was insured against non-payment by the Secretary pursuant to the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement, hereinafter "Secy. Stat.," exh. A). Interstate Plus Mortgage, Inc. assigned the note to The Money Store. Id. Petitioner failed to make payments as agreed to on the note. (Secy. Stat.) Subsequently, The Money Store assigned the note to the United States of America in accordance with 24 C.F.R. § 201.54 (Secy. Stat., exh. B). The Secretary is the holder of the note on behalf of the United States. Id. Petitioners are indebted to the Secretary in the following amounts: \$16,522.93 as the unpaid principal balance as of February 29, 2004; \$4,790.40 as the unpaid interest on the principal balance at 5% per annum through February 29, 2004; and interest on said principal balance from March 1, 2004, at 5% per annum until paid. (Secy. Stat., Declaration of Brian Dillon, exh. C).

Petitioner does not dispute the existence or amount of the debt or that the debt is in default. Rather, Petitioner asserts in opposition to the Department's claim that the alleged debt is past due and enforceable, that: (1) she did not have knowledge of the terms of the note; (2) under the terms of a divorce decree liability for repayment of the loan in question has been transferred or otherwise assigned to Petitioner's former spouse; (3) her former spouse released her from the note; (4) repayment of the note will cause her financial hardship; and (5) she would like to negotiate and come to a settlement agreement with HUD.

First, Petitioner submits that she is responsible for the above referenced debt because she did not know the content of the HUD loan application that she signed. She specifically states that her former spouse:

Made me sign some papers  
without my understanding as to  
what I was signing. Among the papers

I signed, I later found out,  
was a loan application to HUD.  
(Petitioner's letter,  
dated February 12, 2004)

Although Petitioner claims to have no knowledge of the terms of the loan she is, nonetheless, responsible for the terms of the loan. "A person who signs a written contract is bound by its terms regardless of his or her failure to read and understand its terms." Betaco, Inc. v. Cessna Aircraft Co., 32 F.3d 1126, 1136 (7th Cir.1994). Therefore, I find that the Petitioner is bound by the terms of the loan in the above referenced matter.

Second, Petitioner argues that she is not responsible for the loan amount because a divorce decree released her from the obligation. Petitioner submitted copies of "pages 3 and 4 of [her] divorce settlement" which she asserts "clearly should absolve [her] of any liability from this loan." (Petitioner's letter, dated February 12, 2004, unmarked exh.). Petitioner's reliance upon the terms of a divorce decree which purports to release Petitioner from any obligation to repay the subject debt is not a valid defense to this action. On August 13, 1992, both Petitioner and Petitioner's former spouse jointly and severally executed and delivered the installment note. Where a property settlement or divorce decree purports to release one spouse from a joint obligation, the claims of the existing creditors against that spouse are not affected unless the creditors were parties to the action. In the Matter of Deborah Gage, HUDBCA No. 86-1727-F286 (January 14, 1986); see also, 27B C.J.S. Divorce §251 (4) (1959); 63 A.L.R. 3d 373, 403-04 (1975). Petitioner's divorce decree only determined the rights and liabilities between Petitioner and her ex-husband. Kimberly S. King (Theide), HUDBCA No. 89-4587-L74 (April 23, 1990). Petitioner may enforce the divorce decree against her ex-husband in state or local court to recover monies paid to HUD by her to satisfy this obligation. Nevertheless, Petitioner remains jointly and severally liable to the contract at issue and the Secretary has the right to enforce the obligation against her individually.

Third, Petitioner submits that she is released from the subject debt because the co-signor of the note, her ex-husband, released her from the obligation to repay the

debt. Petitioner submitted "photocopies of documents dated 3-4-97 where [her husband] clearly admits that [she] should not be responsible for this loan." (Petitioner's letter, dated February 12, 2004). These documents appear to be releases from Petitioner's ex-husband for any financial responsibilities Petitioner incurred during the time of their marriage. However, despite his intentions, Petitioner's former spouse has no authority to release Petitioner from her obligations to the lender who provided the proceeds of the loan to her and her former spouse.

As a cosigner on the installment note, Petitioner is jointly and severally liable for the obligation. "Liability is characterized as joint and several when a creditor may sue the parties to an obligation separately or together." Mary Jane Lyons Hardy, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). This means that the Secretary may proceed against any cosigner for the full amount of the debt. There must either be a release in writing from the lender specifically discharging Petitioner's obligation, or valuable consideration accepted by the lender from Petitioner, which would indicate an intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (Feb. 28, 1986). Petitioner's evidence fails to prove that the lender did, in fact, release Petitioner from her obligation to repay this debt.

Petitioner asserts that repayment of this debt by means of administrative offset would cause a financial hardship to Petitioner. Petitioner filed a letter to the Board which states she is: "currently unemployed and [has] no income." (Petitioner's letter, dated April 9, 2004). Unfortunately, evidence of hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past-due and enforceable. Charles Lomax, HUDBCA No. 87-2357-G679 (Feb. 3, 1987). Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. Raymond Kovalski, HUDBCA No. 87-1681-G18 (Dec. 8, 1986).

Finally, Petitioner states that she is ready to negotiate and come to a settlement with HUD. Specifically she states:

I am "[willing] to pay off this loan,  
[and am] ready to negotiate

and come to a settlement with [HUD] to reduce this loan amount to an amount which [she] can pay off in installments after I am successful in finding employment." (Petitioner's letter, dated April 9, 2004).

This Board, however, is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may wish to discuss this matter with Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. Petitioner may also request a review of her financial status by submitting to that HUD Office a Title I Financial Statement (HUD Form 56142). In any event, Petitioner has provided no legal or credible factual basis on which this Board can find that she is not liable for repayment of the outstanding balance due on this loan.

**ORDER**

For the reasons set forth above, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioner in the amount 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 to the extent authorized by law.

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David T. Anderson  
Administrative Judge

May 10, 2004