



Office of Appeals
U.S. Department of Housing and Urban Development
Washington, D.C. 20410-0001

In the Matter of:	:	
	:	
Shirley Robinson,	:	
a.k.a Shirley Watts	:	HUDOA No. 08-H-CH-JJ43
	:	Claim No. 721004670
Petitioner	:	
	:	

Shirley Robinson
1905 Tewa Trail
Desoto, TX 75115

Pro se

James W. Webster, Esq.
U.S. Department of Housing and
Urban Development
Office of General Counsel
for Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

For the Secretary

DECISION, ORDER, AND ORDER TO SHOW CAUSE

Petitioner was notified that, pursuant to 31 U.S.C. §§ 3716 and 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 to recover a claimed past-due, legally enforceable debt owed to HUD by referring the matter to the U.S. Department of the Treasury.

Petitioner made a request for a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD. The Office of Appeals has been designated to conduct a hearing to determine whether the debt allegedly owed to HUD is legally enforceable. 24 C.F.R. § 17.152(c). As a result of Petitioner’s hearing request, referral of the debt to the U.S. Department of the Treasury for administrative offset was temporarily stayed by this Office on May 6, 2008, until the issuance of a written decision by the Administrative Judge. See 24 C.F.R. § 17.156.

Background

On December 4, 2003, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note (“Note”) in the amount of \$7,212.45 to secure a partial claim by the Secretary to pay the arrearages on her primary FHA-insured mortgage and avoid foreclosure of her primary residence. (Secretary’s Statement (“Sec’y Stat.”), filed August 7, 2008, ¶ 5, Ex. 2.) The Note cited specific events that made the debt become due and payable, one of these events being if Petitioner has paid in full all amounts due under the primary note and related mortgage insured by the Secretary. (Sec’y Stat., ¶ 6, Exs. 1 and 2, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD (“Dillon Decl.”), dated July 23, 2008, ¶ 4.) On or about June 25, 2004, the FHA mortgage insurance on the original note was terminated as the mortgagee indicated the mortgage was paid in full. (Sec’y Stat., ¶ 8, Ex. 1, Dillon Decl., ¶ 4.)

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is currently in default on the Note and is indebted to the Government in the following amounts:

- (a) \$1,461.42 as the unpaid principal balance as of July 18, 2008;
- (b) \$6.33 as the unpaid interest on the principal balance at 4 % per annum through July 18, 2008; and
- (c) interest on the principal balance from July 19, 2008, at 4 % per annum until paid.

(Sec’y Stat., Ex. 1, Dillon Decl., ¶ 6.) A federal payment offset of \$6,028.00 was applied to Petitioner’s account on March 28, 2008, and is reflected in the above unpaid principal balance. (Sec’y Stat., ¶ 11, Ex. 1, Dillon Decl., ¶ 8.) A second offset of \$1,483.89 was applied to Petitioner’s account on May 9, 2008, following this Office’s Stay of Referral to the Department of the Treasury. (Sec’y Stat., ¶ 12, Ex. 1, Dillon Decl., ¶ 10.) This amount was refunded to Petitioner on July 18, 2008. (*Id.*)

Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A, provides Federal agencies with a remedy for the collection of debts owed to the United States Government. Petitioner bears the initial burden of submitting evidence to prove that the debt is not past-due or legally enforceable. 24 C.F.R. § 17.152(b); *Juan Velazquez*, HUDBCA No. 02-C-CH-CC049 (September 25, 2003).

As a threshold issue, Petitioner claims she did not receive a Notice of Intent to Collect by Treasury Offset. Petitioner states:

I first became aware of an owing balance to HUD in March 2008 when financing a vehicle. . . . On March 28, 2008, I was expecting a much **needed** tax refund for the sake of my family but found out that it was being applied to a \$7,212 liability to HUD. . . . I NEVER received any

notices or phone calls what so ever [sic]! My credit report, if nothing else, could tell you where I was and am living. . . . I'm hurt and disappointed that I was not given an opportunity to fix the issue or come to terms. . . . I was easy to find.

(Petitioner's Request for Hearing ("Pet'r Hr'g Req."), filed April 17, 2008 (emphasis in original.); *see also* Petitioner's Protest of the Secretary's Motion of Enlargement of Time, filed June 11, 2008, ¶¶ 4, 7.)

Pursuant to 24 C.F.R. § 17.151, "[a] request for deduction from a Federal payment will be made only after the Secretary...provides the debtor with 65 calendar days written notice." In this case, a Notice of Intent to Collect by Treasury Offset ("Notice") dated May 29, 2007, was sent to Petitioner at 915 Kim Lane, Mesquite, TX 75149, the property address listed on the Note. (Sec'y Stat., ¶ 2, Ex. 1, Dillon Decl., ¶ 7.) The Notice was returned to the Secretary by the U.S. Postal Service thereafter with no forwarding address. (*Id.*) Subsequently, on June 20, 2007, HUD conducted a "Social Search Report" from CBCInnovis, which revealed five addresses allegedly used by Petitioner and the date which they were first reported, including the address "PO Box 741421, Dallas, TX 75374-1421." (Sec'y Stat., Ex. 1, Dillon Decl., Ex. A.) HUD then mailed a second Notice to Petitioner on August 13, 2007, to "PO Box 742421, Dallas, TX 75374." (Petitioner's Letter ("Pet'r Ltr."), dated April 17, 2008, Attach. 6.) Over seven months later, following the federal payment offset of \$6,028 on March 28, 2008, the second Notice was returned to HUD by the U.S. Postal Service as "UNCLAIMED UNABLE TO FORWARD," date-stamped by the post office April 2, 2008. (Sec'y Stat., ¶ 3, Ex. 1, Dillon Decl., ¶ 7; Pet'r Ltr., Attach. 6.)

In order to address the issue of notice raised by Petitioner, this Office ordered the Secretary to file documentary evidence "which will prove that Petitioner was properly notified of the Secretary's intent to collect this debt by means of administrative offset." (Notice of Docketing, Order, and Stay of Referral, dated May 6, 2008.) In response, the Secretary stated that "[a] second Notice of Intent to Collect by Treasury Offset was mailed to Petitioner's Post Office Box 74121 [sic] Dallas, TX 75374-1421 on August 13, 2007." (Sec'y Stat., ¶ 3.) The Secretary also provided documentary evidence alleging that this Notice was sent to "PO Box 741421." (Sec'y Stat., Ex. 1, Dillon Decl., ¶ 7.) The Notice was mailed to "PO Box 742421," which is neither the PO Box address listed on the Social Search Report, nor either of the addresses alleged by the Secretary. (Pet'r Ltr., Attach. 6.)

Relying on the notice requirements provided under the Texas statute, the Secretary argues that there is no requirement that the debtor must actually receive notice, only that the lender send it. (Sec'y Stat., ¶ 4, *citing* *Byrd v. General Motors Acceptance Corp.*, 581 S.W.2d 198 (Tex.Civ.App. 1989), *Debbie Sharka*, HUDBCA No. 91-A-6053-N57 (March 27, 1992). However, HUD's Notice of Intent is not governed by a Texas statute that governs a "Notice of Acceleration and Sale" by a lender. Furthermore, the Secretary lends his own support for the insufficiency of notice by stating that "a Notice of Intent is effective upon dispatch, *if properly and reasonably addressed.*" (Sec'y Stat., ¶

4, citing *Kenneth Holden*, HUDBCA No. 89-3781-K293 (June 6, 1989) (emphasis added.)) The Notice of Intent, in this case, was not properly and reasonably addressed, and, therefore, the notice to Petitioner was legally deficient.

When the first Notice was returned as unclaimed, HUD acted reasonably in conducting a Social Search Report and attempting to resend a Notice to Petitioner in order to provide Petitioner with a “65 calendar days written notice,” as required under 24 C.F.R. § 17.151. However, HUD did not send the second Notice to the address of record of Petitioner, as the notice was addressed to “PO Box 742421,” and not to PO Box 741421 as listed on the Social Search Report. Therefore, the Notice was not sent to the Petitioner’s address of record, and, thus, failed to comply with the provisions of 24 C.F.R. § 17.151.

ORDER

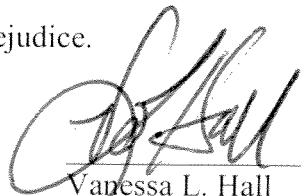
For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative offset shall remain in place indefinitely. It is hereby

ORDERED that the Secretary is not authorized to refer this matter to the U.S. Department of the Treasury for administrative offset of any federal payment due Petitioner. The Secretary shall not be prejudiced from initiating administrative offset proceedings by providing proper notice to Petitioner as required by 24 C.F.R. § 17.151.

ORDER TO SHOW CAUSE

The Secretary, within 15 days from the date of this Decision, shall show cause why Petitioner should not be refunded the federal payment offset in the amount of \$6,028.00 that was applied to Petitioner’s account on March 28, 2008, it appearing that this amount was improperly withheld due to the Secretary’s non-compliance with the notice provisions in 24 C.F.R. § 17.151. (Sec’y Stat., ¶ 11, Ex. 1, Dillon Decl., ¶ 8.)

This matter is **DISMISSED** without prejudice.



Vanessa L. Hall
Administrative Judge

September 25, 2008



Office of Appeals
U.S. Department of Housing and Urban Development
Washington, D.C. 20410-0001

In the Matter of:

Shirley Robinson,
a.k.a Shirley Watts

Petitioner

HUDOA No. 08-H-CH-JJ43
Claim No. 721004670

ORDER

On September 25, 2008, this Office ordered the Secretary to “show cause why Petitioner should not be refunded the federal payment offset in the amount of \$6,028.00 that was applied to Petitioner’s account on March 28, 2008, it appearing that this amount was improperly withheld due to the Secretary’s non-compliance with the notice provisions in 24 C.F.R. § 17.151.” The Order stated that the Secretary shall respond “within 15 days from the date of this decision.” (Emphasis in original.) The Secretary failed to comply with the directive of the Order of September 25, 2008. I find, therefore, that the Secretary’s noncompliance with that Order is deemed an admission by the Secretary that the amount of \$6,028.00 was inappropriately withheld and is owed to Petitioner. It is hereby

ORDERED that the Secretary shall refund Petitioner the amount of \$6,028.00.

Vanessa L. Hall
Administrative Judge

October 15, 2008