

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

In the Matter of:

STEVEN MORAN,

Petitioner.

20-AM-0116-AO-023

7-210166440A

March 29, 2023

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a request for hearing filed by Steven Moran (“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 authorizes federal agencies to use administrative offset as a mechanism for the collection of debts owed to the United States government. *See* 31 U.S.C. §§ 3716, 3720A. The HUD Office of Hearing 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 in 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. The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. Pursuant to 24 C.F.R. § 17.69(b)-(c). Thereafter, Petitioner must show by a preponderance of the evidence that all or part of the alleged debt is either not past due or not legally enforceable.

PROCEDURAL BACKGROUND

On or about March 9, 2020, Petitioner filed the *Request for Hearing* in this case. Pursuant to 24 C.F.R. § 17.77, this Court initially stayed the issuance of an administrative offset order until the issuance of this written decision. (*See Notice of Docketing, Order and Stay of Referral*, dated March 10, 2020 (“*Notice of Docketing*”) at 2. On or about March 9, 2020, Petitioner filed HUD’s Notice of Intent to Collect by Treasury Offset with attached copies of Petitioner’s correspondence with his primary lender, Bank of America, dated March 2, 2020. On or about April 20, 2020, Petitioner filed *Petitioner’s Documentary Evidence* (“*Pet. Stat.*”), consisting of a written statement by Petitioner along with a printout of Petitioner’s loan history from Carrington Mortgage Services (the loan servicer for Petitioner’s mortgage with Bank of America). On or about January 12, 2021, the Secretary filed *the Secretary’s Statement that Peti*

Petitioner's Debt Is Past Due and Legally Enforceable (“*Sec’y. Stat.*”), along with documentary evidence in support of the Secretary’s position.

DISCUSSION

The Secretary maintains that Petitioner is indebted to the Department under the terms of a Subordinate Note, dated August 14, 2013 (“the Note”). The Note was signed by Petitioner., and is attached as Exhibit 1 to the *Sec’y. Stat.* The validity of the Note is further attested to by HUD officials. See *Sec’y Stat.*, ¶¶ 2-5; Exhibit 2 – Declaration of Larry Gagliardi, Jr., Acting Director, Asset Recovery Division, Financial Operations Center of the U.S. Department of Housing and Urban Development (“*Gagliardi Decl.*”). The Department states that the proceeds of the Note in the amount of \$4,089.12, were used to advance funds to provide foreclosure relief to Steven Moran, the Petitioner in this case, to prevent his home from going into foreclosure proceedings when he fell behind on the loan payments with his primary lender, Bank of America. *Sec’y. Stat.* ¶¶ 3-4.

The Secretary avers that the Department has met all requirements for seeking Treasury Offset in this case, and that Petitioner is indebted to the Department in the following amounts:

- (a) \$4,089.12 as the unpaid principal balance as of November 30, 2020;
- (b) \$75.02 as the unpaid interest on the principal balance at 2% per annum through December 30, 2019;
- (c) \$299.26 as the unpaid penalties and administrative costs as of November 30, 2020; and
- (d) interest on said principal balance from December 1, 2020 at 2% per annum until paid.

Id., ¶ 7; *Gagliardi Decl.* ¶ 5. The Secretary further provides that she has provided proper regulatory notice to Petitioner of the Notice of Intent to Collect by Treasury Offset in this case. *Id.*, ¶ 6. The Secretary certifies that the Department paid the FHA insurance claim when it became due and owing under the terms of the Note and related partial claim under the applicable FHA insurance provisions. *Id.*, ¶ 5. The Secretary has therefore met the Department’s initial burden to prove that Petitioner is indebted to the Department in the amounts claimed by the Secretary.

For Petitioner’s part, he does not deny that he received the benefit of the proceeds of the loan. Petitioner also does not claim that he repaid his loan to HUD. Instead, he claims that the Note is not legally enforceable against him because “Latisha from Carrington Mortgage, all told us that the \$4,089.12 was paid but could not show proof.” *Pet. Stat.* Petitioner further states that he has questions about whether HUD was paid, and points to his excellent payment history with Bank of America.

The Secretary states, in contravention, that “Petitioner has not provided any facts or documentary evidence that controvert the existence, amount, and validity of the debt claimed by HUD.” *Sec’y. Stat.* ¶ 8. The Court agrees with the Secretary’s position. One alleged verbal statement by the loan servicer does not amount to documentary evidence that the Note was ever paid to HUD. Neither Bank of America (“BofA”) nor Petitioner’s mortgage servicer, Carrington Mortgage Servicers are agents of HUD, under the law. The documentary evidence provided by

both parties does not establish that HUD “held itself out” as a principal on whose behalf BofA or Carrington Mortgage Servicers were authorized to act. Thus, there is no proof that HUD is, in any way, responsible for the actions or inactions of BofA or Carrington with respect to the debt at issue in this case.

FHA-insured lenders are regulated by HUD and must act in accordance with HUD’s program requirements. *See* 24 C.F.R. Part 203, *et seq.* When a borrower goes into default on an FHA-insured mortgage, HUD, ordinarily, permits the lender to submit a Partial Payment of Claim to prevent foreclosure provided all conditions are met. *See* 24 C.F.R. § 203.371(b). One of those conditions is the execution of a subordinate note and subordinate mortgage by the borrower in favor of HUD, which the lender must facilitate. *Id.* at § 203.371(c). While HUD regulations require the mortgagee to facilitate the borrower’s execution of the subordinate note, unless HUD explicitly requests that a lender service the indebtedness, FHA-insured lenders, ordinarily, do not have blanket authority to service HUD-held debt and/or issue a mortgage satisfaction extinguishing HUD’s indebtedness. In this case, as well, Petitioner has produced no evidence that HUD authorized BofA or Carrington to accept any payment on behalf of HUD, or to otherwise extinguish Petitioner’s debt to HUD.

With respect to the additional charges to Petitioner for interest and penalties, the Court finds that those charges are also entirely proper. The Debt Collection Improvement Act of 1996 requires HUD to refer delinquent debts to the U.S. Department of the Treasury (“Treasury”) for collection. 31 U.S.C. § 3711(g). Once HUD sends a debt to Treasury, Treasury is authorized to charge HUD a fee for its collection efforts. 31 U.S.C. § 3711(g)(6). Those fees are passed on to the debtor. HUD is also required to charge the debtor interest, administrative costs, and penalties. 31 U.S.C. § 3717(a)&(e)(1)-(2). Fees and administrative costs (which includes the fee charged by Treasury) are entirely proper. Payments made by the debtor are first applied to fees, then interest, and then principal. 31 C.F.R. § 901.9(f).

This Court has consistently held that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or enforceable.” In *re Joan Hattan*, HUDOA No. 11-M-NY-LL23 (June 29, 2011) at 3 citing *BonnieWalker*, HUDBCA No. 95-G-NY-7300 (July 3, 1996). Consequently, Petitioner’s allegations must fail for lack of proof.

The Court finds that Petitioner is indebted to the Department in the amounts claimed by the Secretary, and that the Government is entitled to enforce the full amount of its insurance claims sought in this case.

ORDER

Accordingly, it is

ORDERED that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative offset in the amounts claimed by the Secretary. It is

FURTHER ORDERED that the *Stay of Referral* of this matter to the U.S. Department of the Treasury for administrative offset, imposed on March 10, 2020, is hereby **VACATED**.

SO ORDERED,



H. ALEXANDER MANUEL
Administrative Judge

APPEAL NOTICE: You have the right to move for reconsideration of this case before the HUD Office of Hearings and Appeals within 20 days of the date of this ruling or decision; or, thereafter, to reopen this case. Ordinarily, such motions will not be granted absent a demonstration by the movant that there is substantial new evidence to be presented that could not have been presented previously. An appeal may also be taken of this decision to the appropriate United States District Court. For wage garnishments cases, See 24 C.F.R. § 17.81, 31 C.F.R. § 285.119f), and 5 U.S.C. 701, *et seq.* For administrative offset cases, See 24 C.F.R. § 17.73(a), and 5 U.S.C. § 701, *et seq*
