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

In the Matter of:

Harvey J. Reynolds,

Petitioner

HUDOA No. 10-H-CH-LL38
Claim No. 7-702372921A

For Petitioner

Stephen E. Haynes
The Haynes Law Firm
309 N. Fisk
Brownwood, TX 76801

For the Secretary

Matthew Towey, Esq.
U.S. Department of Housing and
Urban Development
Office of Regional Counsel
for Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

DECISION AND ORDER

Petitioner was notified that, pursuant to 31 U.S.C. § 3716, the Secretary of the U.S. Department of Housing and Urban Development ("HUD" or "the Department") 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.

On February 18, 2010, Petitioner made a timely request for a hearing concerning the existence, amount, or enforceability of the debt allegedly owed to HUD. The Office of Appeals has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.170(b). The administrative judges of the Office of Appeals have been designated to conduct a hearing to determine whether the debt allegedly owed to HUD is legally enforceable. 24 C.F.R. §§ 17.152 and 17.153. The Office of Appeals is authorized to conduct hearings to determine whether certain debts allegedly owed to HUD are legally enforceable. (24

C.F.R. § 17.152(c)). As a result of Petitioner's request, this Office temporarily stayed referral of the debt to the U.S. Department of Treasury for offset on February 24, 2010.

Background

HUD holds three Notes from three successive purchasers of a single mobile home: a Mobile Home Retail Installment Contract and Security Agreement dated October 25, 1979 and signed by Julie S. Jones ("Note A"), a Mobile Home Transfer Agreement dated November 22, 1982 and signed by Petitioner and Carol A. Reynolds ("Note B"), and a Manufactured Home Transfer of Equity Agreement and Disclosure Statement dated October 8, 1985 and signed by Fred Moffatt and Betsy Moffatt ("Note C"). (Secretary's Statement ("Sec'y Stat."), filed May 26, 2010, ¶ 1, Ex. 1, Ex. 2, Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), dated May 13, 2010, ¶ 3.)

HUD has attempted to collect on the Note from Petitioner, but Petitioner remains delinquent. (*Id.* at ¶ 22, Ex. 2, Dillon Decl., ¶ 10.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in the following amounts:

> (a) $11,009.23 as the unpaid principal balance as of April 30, 2010;
> (b) $9,534.75 as the unpaid interest on the principal balance at 6% per annum through April 30, 2010; and
> (c) interest on the principal balance from April 30, 2010 at 6% per annum until paid.

(*Id.* at ¶ 7, Ex. 2, Dillon Decl., ¶ 10.) A Notice of Intent to Collect by Treasury Offset dated February 1, 2010 was sent to Petitioner. (*Id.* at ¶ 24, Ex. 2, Dillon Decl., ¶ 11.)

Discussion

31 U.S.C. § 3716 provides federal agencies with a remedy for collecting debts owed to the United States Government. In this case, HUD seeks debt collection from Petitioner by means of administrative offset of any federal payments due to Petitioner. Petitioner contends that the alleged debt is unenforceable because: (1) the Secretary has provided no proof that Petitioner was contractually obligated to repay the Note after it was assumed by Fred and Betsy Moffatt; (2) Note C is not a legal instrument but only a disclosure statement; (3) the term "original buyer" in Note C is ambiguous; (4) Petitioner did not sign at the space provided for the signature of the "Seller" at the end of Note C; (5) the collection of Petitioner's debt is barred by the Texas statute of limitations; (6) the collection of Petitioner's debt is barred by the doctrine of laches; (7) Petitioner was not notified of the default because he moved and did not receive any notices concerning the default and sale of the mobile home; (8) the credit of $200 for the mobile home at default "is highly suspect"; and (9) Petitioner is "being singled out" and not allowed to pursue indemnity from other obligors.

First, Petitioner asserts that the Secretary has "provided no proof that the Petitioner was contractually obligated to repay the note after it was assumed by Fred and Betsy Moffatt." (Petitioner's Letter ("Pet'r Ltr."), filed April 26, 2010, Page 1.) Petitioner states:

> The Petitioner owned the mobile home for only three years, and he made each payment during the term of his ownership. He sold the mobile home two years before the default occurred, and the lender accepted the assignment of the note to the new purchaser. There is no evidence that the Petitioner remained contractually obligated to repay the note after the mobile home was sold.

(*Id.*, Page 1.)

However, Petitioner has failed to provide documentary evidence in support of his claim. The Secretary, on the other hand, provides as proof, a copy of Note B, and Note C, bearing Petitioner's signature and argues:

> [w]hen he [Petitioner] purchased the mobile home, Petitioner signed Note B as the 'Transferee' and thereby assumed all obligations and covenants of the original Note A. Then, when he sold the mobile home, Petitioner signed Note C as the 'Original Buyer,' the designation given to the seller of the mobile home on this form agreement. Petitioner was not released from liability by this transfer, as Note C provides that the original buyer agrees that he will still be obligated under the Contract. The liability of the original buyer will not be affected by any extension, renewal or other change in the terms of the Contract. The original buyer does not have to receive notice of nonpayment or nonperformance of the Contract by the new buyer. Therefore, Petitioner remains contractually obligated to repay the debt.

(Sec'y Stat., ¶¶ 4-5, Ex. 1, Note B, ¶ 2, Note C, ¶ 4, Ex. 2, Dillon Decl., ¶ 4.)

While Note A does not reflect Petitioner's signature, Petitioner thereafter signed Note B as the transferee. Upon reviewing the language in Note B, the transferee, by legal obligation, assumes all obligations and covenants of the Original Note including the payment of the Note. (See Sec'y Stat., Ex. 1, Note B, ¶ 2. Even through Petitioner subsequently sold the mobile home, he sold it as an original buyer. Based upon the terms of the agreement, the original buyer remains obligated under the terms of the agreement without regard to the sale of the property. *See Frank Flores*, HUDBCA No. 00-C-CH-AA28 (September 6, 2000) (For Petitioner to prevail where the property has been sold, "the lender would have had to have given Petitioner a written release, or other documentary evidence, indicating an intent to release supported by legally sufficient consideration.)

Petitioner became liable for the debt when he signed Notes B and C. This Office has maintained "[i]n order for Petitioner not to be held liable for 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."

Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003); *Cecil F. and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986); and *Jesus E. and Rita de los Santos*, HUDBCA No. 86-1255-F262 (February 28, 1986)). Petitioner has not provided any documentary evidence to prove that the lender or HUD was a party to a written release or an agreement to release Petitioner from liability. Therefore, I find that Petitioner remains legally obligated to pay the subject debt and as such, the debt is legally enforceable against Petitioner in the amount claimed by the Secretary.

Second, Petitioner argues that Note C is not a legal instrument and is instead only a Truth-In-Lending Disclosure Statement:

> The [Secretary's] reliance on [the Truth-in-Lending Disclosure Statement ("disclosure statement")] is misplaced. The disclosure statement is not a separately enforceable legal instrument. Rather, it is given merely to inform the purchaser of his financial obligation as required by the Truth-in-Lending Act. In fact, the last sentence of the disclosure statement highlights this point by insisting that the actual contract of sale must be attached to the disclosure statement.

(Pet'r Ltr., Page 2.) The Secretary responds as follows:

> While it is true that the top portion of the form agreement used in Note C is a Truth-In-Lending disclosure, the bottom of the form agreement is labeled "Transfer of Equity Agreement" and is the contract for this transfer. This document provides the terms of the sale, including Petitioner's ongoing liability.

(Sec' Stat., ¶ 7, Ex. 1, Note C.)

> The Manufactured Home Transfer of Equity Agreement and Disclosure Statement dated October 8, 1985, was an agreement between the Original Buyer identified as Harvey J. Reynolds (Petitioner) and Carol A. Reynolds; the New Buyer identified as Fred and Betsy R. Moffatt and the Assignee known as Green Tree Acceptance, Inc. (Green Tree). Petitioner was not released from liability as referenced under #4 of the Note, 'The original buyer agrees that he will still be obligated under the contract. The liability of the original buyer will not be affected by any extension, renewal or other change in the terms of the Contract. The original buyer does not have to receive notice of nonpayment or nonperformance of the contract by the new buyer.' Petitioner signed as the Original Buyer agreeing to the terms of the Note.

(Dillon Decl., ¶ 4.)

Upon further examination of Note C, there is no indication on the face of Note C that the document is not a valid legal agreement. While Petitioner contends that the top portion of Note C is a disclosure statement, the bottom portion, labeled "Transfer of Equity Agreement," provides that Note C is an agreement between the parties regarding the assumption of the original contract covering the sale of the manufactured home. In particular, Note C states, "This

is an agreement between the original buyer[, identified as Petitioner and Carol A. Reynolds], the new buyer[, identified as Fred and Betsy R. Moffatt,] and [the assignee, identified as Green Tree,] covering the sale of the manufactured home and assumption of the Contract." (Sec'y Stat., Ex. #1, Note C, ¶ 1.) Note C also provides that the original buyer (i.e., Petitioner) is not released from liability under the original contract covering the sale of the home as: "The original buyer agrees that he will still be obligated under the contract. The liability of the original buyer will not be altered by any extension, renewal or other change in the terms of the Contract. The original buyer does not have to receive notice of nonpayment or nonperformance of the Contract by the new buyer." (Sec'y Stat., Ex. 1, Note C, ¶ 4.) Petitioner signed as the original buyer agreeing to the terms of Note C. Thus I find that Note C, bearing Petitioner's signature is a legally binding agreement that obligates Petitioner as the person responsible for the payment of the alleged debt.

Third, Petitioner argues that the term "original buyer" in Note C is ambiguous, and may instead refer to Ms. Jones as the debtor under Note A. Petitioner states the following:

> Additionally, the disclosure statement does not bind the Petitioner as alleged. The disclosure statement provides, "The original buyer will still be obligated under the contract" (emphasis added). The Petitioner was not the "original buyer." In fact, the Respondent's Reply shows that the Petitioner was the second owner of the mobile home. The original buyer was Julie Jones. In other words, the term "original buyer" is ambiguous as it is used in the disclosure statement.

(Pet'r Ltr., Page 2.) In response, the Secretary states the following:

> However, the term "original buyer" is not ambiguous as used in Note C. Note C uses a form Transfer of Equity Agreement and Disclosure Statement, which labels the current owner as the "original buyer." This is demonstrated by the fact that Petitioner and Carol A. Reynolds' names are typed at the top of the form in the space labeled "Original Buyer," and is further demonstrated by Petitioner and Carol A. Reynolds' signatures at the end of the Transfer of Equity Agreement on the lines that are clearly labeled "Original Buyer."

(Sec'y Stat., ¶ 9.)

Upon a further review of Note C Petitioner's name is typed, rather conspicuously, at the top of Note C in the space labeled "Original Buyer." Additionally at the bottom of Note C is Petitioner's signature identifying him as the "Original Buyer." The agreement bearing Petitioner's signature also provides, "Both the original buyer [Petitioner] and the new buyer acknowledge receipt of a completed copy of this agreement and the original contract." (Sec'y Stat., Ex. 1, Note C, p. 1.) Petitioner has not provided evidence that is sufficient enough to release Petitioner from his obligation to pay the alleged debt, and further, supports that the term "original buyer" is ambiguous. As a result, I find that Petitioner remains legally bound by the terms of the Note C agreement bearing his signature.

Fourth, Petitioner argues that Note C is not valid because he did not sign at the space provided for the signature of the "Seller" at the end of the Transfer of Equity Agreement." (Pet'r Ltr., Page 2.) In particular, Petitioner states the following:

> Also, it should be noted that there is an unambiguous statement at the bottom of the disclosure statement labeled, "Approval of Seller." This provision may have bound the seller if it had been signed, but it was not signed by the Petitioner. Accordingly, the disclosure statement did not bind the Petitioner to repay the debt after the note was assumed.

(Pet'r Ltr., Page 2.) The Secretary responds as follows:

> [I]n the transfer described in Note C, the Seller is not Petitioner, but is instead the original seller, Love Mobile Homes ("Seller"). This is demonstrated by the fact that "Love Mobile Homes" is typed at the top of the form in the space labeled "Seller." This terminology is also consistent with the language of Notes A and B.
>
> Note A was assigned by Seller to Green Tree Acceptance, Inc. ("Lender"). With this assignment, Seller transferred all rights, title and interest of Note A (including the right to approve transfers) to Lender. Because Seller no longer had any interest in the agreement, Seller need not sign Note C and the transfer was validly executed by Petitioner, Lender, and the new buyers.

(Sec'y Stat., ¶ 11.)

Upon a careful review of Note C, I again find that Note C is a valid document without the signature of the seller who assigned his interest to Green Tree (Sec'y Stat., Ex. 1, Attach.). Under the "Transfer of Equity Agreement," Note C provides that it is an agreement between the original buyer, the new buyer, and Green Tree as Seller's assignee. All the persons designated as parties to the agreement, that is the original buyer, new buyer, and Green Tree, have signed it. The Seller no longer had any interest in the agreement and as such, the Seller's signature was not required in order to validate the execution of the agreement.

Fifth, Petitioner argues that the collection of his debt is barred by the Texas statute of limitations. Petitioner states, "Texas law is clear that a debt must be reduced to a judgment within four (4) years of default. TEX. CIV. PRAC. & REM. CODE § 16.004. Here, the alleged default occurred in 1987, more than twenty (2) years ago." (Pet'r Ltr., Page 2.) In response, the Secretary asserts that "[t]he Office of Appeals, in Angela Cortez, HUDOA No. 09-M-CH-AWG102, has already recognized that while 31 U.S.C. [§] 3716(e)(1) previously contained a ten-year statute of limitations, the statute was amended in 2008 to eliminate limitations period." (Sec'y Stat., ¶ 13.)

The pertinent Federal statute applicable to collection of debts by administrative offset clearly provides that "[a]fter trying to collect a claim from a person under § 3711(a) of this title, the head of an executive . . . agency may collect the claim by administrative offset." 31 U.S.C. § 3716(a) (2008). Furthermore, this statute provides that "[n]otwithstanding any other provision of

law, regulation, or administrative limitation, no limitation on the period within which an offset may be initiated or taken pursuant to this section shall be effective." 31 U.S.C. § 3716(e)(1) (2008). Additionally, the Supreme Court has held that no statute of limitations exists in administrative proceedings. *B.P. America Prod. Co. v. Burton*, 127 S. Ct. 638 (2006). This means that there is no time limitation restricting the right of the Government to collect this debt by means of administrative offset. Therefore, consistent with statutory regulations and case law precedent, I find that the Secretary is not barred by statute of limitations from collecting the alleged debt by means of administrative offset.

Sixth, Petitioner argues that the collection of his debt is barred by the doctrine of laches: "Under the doctrine of laches, it would be inequitable to allow [the Secretary] to proceed with [his] claim more than twenty (20) years after the alleged default." (Pet'r Ltr., Page 2.) Petitioner further argues, "In essence, [HUD] sat on its legal rights, failed to notify the Petitioner of the claim, and now alleges to be entitled to more than twenty (20) years of interest that brings the total to an amount similar to the original purchase price." (*Id.* at Page 3.) As the Secretary correctly asserts in response, this Office previously held that an "alleged delay in pursuing HUD's claim does not prevent the Secretary from enforcing the terms of the Note." *Lora Foley*, HUDOA No. 09-M-AWG20 (March 23, 2009) (*citing David Olojo*, HUDOA No. 07-H-CH-AWG19 (October 4, 2007) ("It is well-established, however, that the United States is not generally subject to the defense of laches")). Furthermore, it has been consistently held that "laches is not a defense against the sovereign." *Costello v. United States*, 365 U.S. 265, 281, 81 S.Ct. 534, 543 (1961*); Issac and Emma Wilson*, HUDBCA No. 99-C-SE-Y80 (December 26, 2000). Therefore, I find that the doctrine of laches is not an available defense for Petitioner thus the debt is not barred from being collected from Petitioner.

Seventh, Petitioner argues that he was not notified of the default because he moved and did not receive any notices concerning the default and sale of the mobile home. Petitioner states:

> First, although the [Secretary] claims [he] attempted to notify the Petition[er] of the alleged default, the letters were not received by the Petitioner as he had moved from the address on [the Secretary's] correspondence. Clearly, the [Secretary] or [his] predecessor knew this fact because the letters were inevitably returned as "undeliverable." Accordingly, the Petitioner never had the required statutory notice and right to cure the default, nor did he have any notice of the alleged debt for over two decades.

(Pet'r Ltr., Page 2.) The Secretary asserts in response:

> [T]he terms and provisions of Note A, which are incorporated into Note C, state that upon default and public sale of the collateral, the "requirement of sending reasonable notice shall be met if such notice is mailed postage prepaid to Buyer at the address designated at the beginning of this Agreement at least five days before the time of the actions specified in the notice."
>
> Petitioner's designated address on Note C was 26 Greenview Lane, Midland, TX 79701. The Notice of Default and Right to Cure dated March 4, 1988, the Notice of Acceleration and Request to Vacate dated April 4, 1988, and the Notice of Private Sale dated May 26,

1988 were sent to this address. There is no evidence in HUD's files that any of these notices were returned by the United States Post Office.

(Sec'y Stat., ¶ 17, Ex. 1, Note A, Ex. 2, Dillon Decl., ¶¶ 6-7, Ex. A.)

This Office has held that a "Notice of Intent is effective upon dispatch, if properly and reasonably addressed." *Shirley Robinson*, HUDOA No. 08-H-CH-JJ43 (September 25, 2008), *citing Kenneth Holden*, HUDBCA No. 89-3781-K293 (June 6, 1989) (emphasis added.). This Office also has concluded that the same reasonable standard, established in *Kenneth Holden* and *Shirley Robinson*, can similarly be applied to demands for payment alleged to be improperly addressed.

The requirements of 31 U.S.C. § 3716(a) were satisfied in this case by sending a written notice to Petitioner's last known address at 26 Greenview Lane, Midland, TX 79701, and providing Petitioner with the opportunity to be heard prior to certifying his account for offset. Here, the Secretary has provided sufficient documentary evidence that the Notice of Intent to Collect by Treasury Offset ("Notice") was sent to Petitioner's last known address pursuant to 31 U.S.C. § 3716 (a). (See Sec'y Stat., Ex. #2, Dillon Declaration, ¶ 11.) Therefore, I find that the Notice sent to Petitioner was legally sufficient.

Eighth, Petitioner argues that the credit of $200 for the mobile home at default "is highly suspect." (Pet'r Ltr., Page 3.) Petitioner has not filed, however, any documentary evidence to support his assertion that the credit of $200 for the mobile home at default is "highly suspect." The Secretary responds:

> "Upon default, the mobile home was repossessed and sold. The debt balance is credited with the best price obtainable, which is the greater of the appraised value or the net sales price. Petitioner's account was credited with the appraised value of $200, which was paid by Lender to HUD on September 26, 1988." (Sec'y Stat., ¶ 19, Ex. 2, Dillon Decl., ¶ 8, Ex. B, Ex. C.) The Secretary also asserts, "Attached as Exhibit C is a check dated September 26, 1998 made payable to Green Tree that reflects the Repossession Proceeds of several units totaling $21,900. The breakdown of this payment confirms the proceeds from the Petitioner's repossession of $200.00. Although attorney feels the $200 amount is highly suspect, he has failed to provide evidence to rebut the $200.00 appraised value." (Dillon Decl., ¶ 8.)

Without evidence to otherwise rebut or refute the evidence submitted by the Secretary, I find that Petitioner's claim fails for lack of proof. See *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996) (Assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due or enforceable.)

Finally, Petitioner argues "that he is being singled out" and that earlier collection efforts would have allowed him to pursue indemnity from the other obligors. Petitioner states below:

> . . . Petitioner is particularly concerned that he is being singled out for liability on this debt, even though the [Secretary] clearly acknowledges that there are other obligors on this note, including those who are actually responsible for the default. Again, if legal action had been timely filed, the issue of joint and several liability and/or indemnity between the alleged co-obligors would be a major issue for the courts to decide."

(Pet'r Ltr., Page 3.) The Secretary responds as follows:

> Petitioner and the other obligors are jointly and severally liable for the entire amount of the debt due HUD. "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 (July 15, 1987). HUD may collect from one or all of the parties to the note. Petitioner is therefore responsible for the entire amount of the loan.

(Sec'y Stat., ¶ 21.)

Regardless of whether Petitioner and the other obligors are jointly and severally liable for the debt, for Petitioner not to be held liable 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 (February 28, 1986). Petitioner has submitted no evidence to establish the requirements for a valid release. Thus, without sufficient documentary evidence, Petitioner has no legal basis upon which I can find that he is not liable for repayment of the outstanding balance due on the Note.

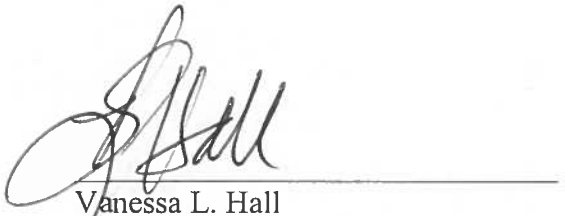
In sum, the burden of proof in administrative offset cases such as this case requires that the debtor "present evidence that all or part of the debt is not past due or not legally enforceable . . ." 24 C.F.R. §§ 17.152 (a) and (b). Petitioner has the burden of producing evidence which demonstrates that the claimed debt is not past-due or legally enforceable. In this case, Petitioner has failed to meet that burden. *Ronald Durr,* HUDBCA No. 86-1422-F413 (Mar. 28, 1986); *see also Michael Cook*, HUDBCA No. 87- 2782-H307 (Aug. 11, 1988).

Based on the foregoing, Petitioner entered into this debt, HUD was not paid for this debt, and the debt is past due and legally enforceable by HUD against Petitioner. Petitioner's failure to meet his burden of proof to prove otherwise supports the finding that he remains legally obligated to pay the debt that is the subject of this proceeding.

ORDER

It is hereby **ORDERED**, for the reasons set forth above, that the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative offset is **VACATED**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative offset of any federal payments due to Petitioner to the extent authorized by law.



Vanessa L. Hall
Administrative Judge

December 17, 2010