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

In the Matter of:

Daniel Thompson,

Petitioner

HUDOA No. 10-H-CH-LL72
Claim No. 7-71057616 OA

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Pro se

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For the Secretary

DECISION AND ORDER

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" or "the Secretary") 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 March 8, 2010, 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 jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.152. 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. As a result of Petitioner's hearing request, this Office temporarily stayed referral of the debt to the U.S. Department of Treasury for offset on March 9, 2010. (Notice of Docketing, Order and Stay of Referral ("Notice of Docketing"), dated Mar. 9, 2010.)

Background

On January 19, 1995, Petitioner executed a Note in the amount of $25,000.00 payable to American Unified Mortgage – Inc. (Secretary's Response to Petitioner's Defense and Statement, "Sec'y Stat." Gov't Ex. 2, Note.) After default by Petitioner, the Note was assigned to HUD by U.S. Bank National Association f/k/a First Bank (NA) d/b/a The Money Store under the regulations governing the Title I Insurance Program. (Sec'y Stat., Gov't Ex. 3, Dillon Decl. ¶ 3.)

The Secretary has filed a statement alleging that Petitioner remains in default and is indebted to HUD in the following amounts:

(a) $24,434.63 as the unpaid principal balance as of February 28, 2010;
(b) $16,324.10 as the unpaid interest on the principal balance at 5% per annum through February 28, 2010; and
(c) interest on said principal balance from March 1, 2010 at 5% per annum until paid.

(Sec'y Stat. ¶ 3; Dillon Decl. ¶ 4.)

A Notice of Intent to Collect by Treasury Offset, dated February 22, 2010, was sent to Petitioner pursuant to 31 C.F.R. § 285.2. (Sec'y Stat. ¶ 4 ; Dillon Decl. ¶ 5.) On March 2, 2010, a copy of HUD's records concerning the alleged debt were sent to Petitioner. (Dillon Decl. ¶ 6.) On August 24, 2010, a copy of Petitioner's entire file was sent to Petitioner. (Porter Decl. ¶ 3.)

Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A, provides federal agencies with the remedy of administrative offset of federal payments for the collection of debts owed to the United States Government. In these cases, 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).

Petitioner first claims that the alleged debt was paid off when the house was sold and, as a result, the debt does not exist. Petitioner contends that "from my understanding with the [r]ealtors at the time, the house was sold by the 1st Deed of Trust lender and both the 1st and 2nd Deeds of Trust were paid off. I stand by this, as HUD has not proved anything to me." (Petitioner's E-mail, "Sept. E-mail" Sept. 1, 2010.) However, in this case, Petitioner has failed to meet his initial burden of proof as required under 24 C.F.R. § 17.152. S*ee Remington Investments, Inc. v. Hamedani,* 64 Cal.Rptr.2d 376 (Cal.App.2.Dist., 1997) (when lender holds uncancelled promissory note, presumption exists that borrower received face amount of note and did not repay it; burden then shifts to borrower to rebut this presumption either by proving payment or by proving that face amount of note was never advanced); *Egilber v. Hall,* 112 P.2d 291 (Cal.App.3.Dist., 1941) (In an action on note, burden of rebutting presumption of nonpayment was on defendants); *Turner v. Turner*, 21 P. 959 (Cal. 1889) (Possession of a negotiable instrument by payee is prima facie evidence of nonpayment).

While Petitioner has never denied that he owed the alleged debt, he has failed to produce documentary evidence that proves that he was released from the legal obligation to pay the alleged debt because either the debt was paid, or because the payment of the alleged debt was never advanced. Instead, Petitioner relies upon documentary evidence provided to him by the Secretary, as well as statements allegedly made by Petitioner's realtors, to otherwise prove his position that the alleged debt already had been paid. In order to prove that the Petitioner is no longer legally obligated to pay the alleged debt, this Office has consistently held that a written release is necessary to establish release from liability for payment. *See In re Charles Snyder and Tammy Snyder*, HUDBCA No. 04-K-CH-EE018 at 3 (June 17, 2004) (citing *In re Valerie L. Karpanai*, HUDBCA No. 87-2518-H51, at 2 (January 27, 1988)). A written release "must be in writing or supported by sufficient valid or valuable consideration." *Id.* Absent a written release produced by Petitioner, and without further proof to substantiate his claim, Petitioner's reliance upon the words of his realtors or upon the Secretary's documentary evidence is insufficient as proof of Petitioner's release from the alleged debt. Thus, I find that Petitioner remains legally obligated to pay the alleged debt.

Petitioner next argues that the 2008 amendment to 31 U.S.C. § 3716 does not have a retroactive effect and therefore the Secretary is barred from collecting on Petitioner's alleged debt. (Petitioner's Letter, "March Letter", dated March 20, 2010, ¶ 1.) Again, Petitioner does not deny that he owes the debt, but instead argues that such debt is still barred from being collected by the statute of limitations. Petitioner cites to 24 C.F.R. § 17.160, a copy of which Petitioner admits was sent to him by the Secretary on February 16, 2010. (Id.) The language of the amendment, upon review, provides that "the amendment…shall apply to any debt outstanding *on or after the date of the enactment of this Act*," the date of enactment being May 22, 2008. Pub. L. No. 110-234, § 14219(b), 112 Stat. 923. (emphasis added.) *See also In re Jerry Minchew*, HUDOA No. 10-M-NY-LL58 (Aug. 17, 2010); and *United States v. Singer*, 943 F. Supp. 9 (D.D.C. 1996) (holding that legislation eliminating all statutes of limitation on actions to recover on defaulted student loans applied retroactively to revive the cause of action that would otherwise have been time barred)[1]. Furthermore, 31 C.F.R. § 285.2(6)(i) provides:

> Creditor agencies may submit debts to FMS for collection by tax refund offset *irrespective of the amount of time the debt has been outstanding*. Accordingly, all nontax debts, including debts that were delinquent for ten years or longer prior to December 28, 2009 may be collected by tax refund offset. (emphasis added.)

(See also Sec'y Resp. to Pet'r's Def. ¶ 2.)

Petitioner has not proffered any evidence showing that the debt in this case has been satisfied, or that the alleged debt no longer remains outstanding. Therefore I find, consistent with *Minchew*, *Singer*, and the provisions of 31 C.F.R. § 285.2(6)(i), that the 2008 amendment to 31 U.S.C. § 2716 shall be retroactively applied to the alleged debt owed by Petitioner, and as such, is not barred from collection.

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[1] Although this case was later reversed in part, the appellate court affirmed the district court's finding that the language of the Higher Education Technical Amendments of 1991 effectively revived the government's claim against the debtor. *See, United States v. Singer,* 132 F.3d 1482 (Table), 1997 WL 812459 (C.A.D.C. 1997.)

Petitioner next argues that the Declaration of Brian Dillon is inadequate evidence because it contains perjured statements. Specifically, Petitioner states:

> With regards to "The Declaration of Brian Dillon", I would like to point out the untruths as follows: [f]irst, said declaration states that *31 C.F.R. [§] 285.2 dated February 22, 2010 was sent to me.* This is perjury, I have received 24 C.F.R. [§§] 17.150 through 17.170 dated February 16, 2010. (emphasis added.)

(March Letter, ¶ 2.) However, Petitioner not only has misquoted the language in the Dillon Declaration, but his account of the facts is also inaccurate. Upon reviewing the Dillon Declaration, the director of the Asset Recovery Division actually states, "*[p]ursuant to* 31 C.F.R. § 285.2, a Notice of Intent to Collect by Treasury Offset dated February 22, 2010 was sent to Petitioner," not "*31 C.F.R. § 285.2 dated February 22, 2010 was sent to me.*" (emphasis added) (Dillon Decl. ¶ 5.) Petitioner also admits in the same March Letter that, "…I received 'The Notice of Intent to Collect' dated February 22, 2010." (Id. at 4.) Accordingly, I find that Petitioner has failed to submit sufficient documentary evidence that proves the Dillon Declaration contains perjured statements. I further find Dillon's Declaration to be credible based upon the fact that Petitioner has failed to produce evidence to sufficiently prove otherwise.

Lastly, Petitioner suggests that the Secretary should be barred from collecting the debt based on the doctrine of laches. Specifically, Petitioner states:

> I had no prior knowledge of this debt until I received 'The Notice of Intent to Collect' dated February 22, 2010….After 13 years I no longer have any paperwork or evidence to state my case of *thinking this loan had been paid off.* I don't even know if the 2nd Deed of Trust was indeed paid off and then the lender had filed a claim with HUD at the same time. I can't even research the potential of fraud because of the lapse of time. (emphasis added.)

(March Letter, ¶ 4.) While Petitioner claims, on the one hand, that he had no prior knowledge of the alleged debt, Petitioner, on the other hand, subsequently acknowledges the existence of the loan by admitting that he thought "this loan had been paid off." (Id.) Having acknowledged the existence of the loan, without neglect or omission to assert his right, Petitioner's claim of laches due to a lapse of time is not an available defense for him. Laches is defined as "such neglect or omission to assert a right as taken in conjunction with the lapse of time, more or less great, and other circumstances causing prejudice to an adverse party . . . ." *Nealis v. Carlson*, 219 P.2d 56 (Cal.Ct.App. 1950)(citing 10 Cal.Jur. p. 520, § 60). Again, such is not the case for Petitioner.

Furthermore, it is well settled that the United States is not bound by state statutes of limitation or subject to the defense of laches in enforcing its rights. *Alaska Dept. of Environmental Conservation v. E.P.A.*, 540 U.S. 461, 514 (2004) (citing *United States v. Summerlin*, 310 U.S. 414, 416 (1940). *See also United States v. Railway Co.*, 118 U.S. 120, 125; 6 Sup. Ct. Rep. 1006, 1008) ("The principle that the United States are not bound by any statute of limitations, nor barred by any laches of their officers, however gross, in a suit brought by them

as a sovereign government to enforce a public right, or to assert a public interest, is extablished [sic] past all controversy and doubt."). Consistent with the U.S. Supreme Court in *Alaska Dept. of Environmental Conservation*, *Summerlin,* and *Railway Co.*, I find that the Secretary is not barred by the doctrine of laches from collecting this debt.

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be 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 the Treasury for administrative offset is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative offset of any federal payment due Petitioner.

Vanessa L. Hall
Administrative Judge

December 17, 2010