Office of Appeals
U.S. Department of Housing and Urban Development
Office of Hearings and Appeals
Washington, D.C.

In the Matter of: **JAY HASSMAN,** Petitioner	HUDOA No. 11-M-NY-LL52 Claim No. 7-210070560A Order Date: May 2, 2012

DECISION AND ORDER

On August 15, 2011, the Secretary of the U.S. Department of Housing and Urban Development ("HUD") notified Petitioner that the Department intended to seek administrative offset of any federal payments due to Petitioner in satisfaction of a debt allegedly owed to HUD.

In response, Petitioner filed a Hearing Request to challenge the existence, amount or enforceability of the alleged debt. (Petitioner's Hearing Request ("Pet'r's Hr'g Req."), filed September 6, 2011). The Secretary has designated the administrative judges of this Office to conduct hearings to determine whether the underlying debt in administrative offset cases is legally enforceable or not. 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 the Treasury for administrative offset on September 7, 2011.

Background

On October 14, 2004, Petitioner executed and delivered a Partial Claims Promissory Note ("Note or "Subordinate Note") in the amount of $6,245.60 to the Secretary. (Secretary's Statement ("Sec'y Stat.") ¶ 4, filed September 28, 2011; Ex. A, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), ¶ 4.) In exchange, HUD advanced funds to Petitioner's lender, Chase Manhattan Mortgage Co. ("Chase"), to bring Petitioner's primary home mortgage current and avoid foreclosure. (Sec'y Stat., ¶ 4; Dillon Decl., ¶ 4.)

The Subordinate Note described specific events that would cause the debt to become immediately due and payable. One of these events is the payment in full of the primary mortgage. (Sec'y Stat., ¶ 5; Dillon Decl., ¶ 4; Ex. B, Note ¶ 3(A)(i).) The Note also specifies that Petitioner must make payment at:

Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410, or any such other place as [HUD] may designate in writing by notice to Borrower.

(Note, 3(B).)

On or about August 25, 2005, the FHA insurance on Petitioner's primary mortgage was terminated when Chase notified the Secretary that the mortgage had been paid in full. (Sec'y Stat., ¶ 6; Dillon Decl., ¶ 4.) The Secretary alleges that Petitioner failed to make payment at the place and in the amount specified in the Note. (Sec'y Stat., ¶ 8.) As a result, the Secretary contends that Petitioner is indebted to HUD in the following amounts:

(a) $6,245.60 as the unpaid principal balance as of August 31, 2011;
(b) $26.00 as the unpaid interest on the principal balance at 1% per annum through August 31, 2011;
(c) $376.30 in unpaid penalties through August 31, 2011;
(d) $35.33 in administrative costs through August 31, 2011; and
(e) interest on said principal balance from September 1, 2011, at 1% per annum until paid.

(Sec'y Stat., ¶ 9; Dillon Decl., ¶ 5.)

A Notice of Intent to Collect by Treasury Offset, dated August 15, 2011, was sent to Petitioner. (Sec'y Stat., ¶ 10; Dillon Decl., ¶ 6.)

Discussion

The Debt Collection Improvement Act of 1996, as amended (31 C.F.R. § 3716), and the Deficit Reduction Act of 1984 (31 U.S.C. § 3720A) authorize federal agencies to administratively offset any federal, non-salary payments due a debtor in order to collect debts owed to the United States Government. If the debtor contests the offset action, he or she bears the initial burden of submitting evidence to prove that the alleged debt is not past-due or not legally enforceable. 24 C.F.R. § 17.152(b); *Juan Velazquez*, HUDBCA No. 02-C-CH-CC049 (September 25, 2003).

Here, Petitioner makes several arguments disputing the existence of the debt. Specifically, Petitioner contends that (1) the alleged debt was paid in full when the subject property was sold; (2) either Petitioner's title company or Chase failed to submit payment to HUD on Petitioner's behalf; (3) Chase informed him that the loan was satisfied, thereby releasing him from any further repayment obligation; (4) HUD has failed to prove that the debt is presently owing; (5) offset is not legally enforceable because he had filed for bankruptcy protection in 2006 and 2007; and (6) offset is not legally enforceable because HUD has failed to comply with its own procedural requirements. (Pet'r's Hr'g Req., p. 1; Response to Secretary's Statement ("Pet'r's First

Response"), p. 1, filed October 28, 2011; Response to Secretary's Statement ("Pet'r's Second Response"), filed December 23, 2011.)

First, Petitioner maintains that a HUD-1 Settlement Statement pertaining to the sale of the subject property in 2004 shows that the alleged debt in this case was paid off. (Pet'r's Second Resp., ¶ 8.) He states that this HUD-1 "included a payoff in the amount of $6,245.00," nearly the exact amount of the alleged debt. (*Id.*) Petitioner also states that the purchaser of the property is "willing and able" to provide the document to the Court. (*Id.*) However, Petitioner has not actually submitted any such document, nor has he submitted any other evidence showing that the debt to HUD was paid as part of the 2004 property sale. Petitioner's assertion that a third party could potentially produce probative evidence is not equivalent to the actual production of that evidence. In the absence of such evidence, Petitioner's first argument fails for lack of proof.

Petitioner next contends that the title company he retained during the property sale was "the entity responsible for sending all pay-offs to all lien holders and note holders on that mortgage [sic]." (Pet'r's Hr'g Req., p. 1.) Any failure to repay HUD's debt would therefore be the responsibility of either the title company or Chase, he argues. (Pet'r's Second Resp., ¶ 21.)

The Secretary counters that neither the title company nor Chase were authorized to accept payment on behalf of HUD, and so any payments made by Petitioner to either entity were made in violation of the terms of the Subordinate Note. (Supplemental Secretary's Statement ("Supp. Sec'y Stat."), ¶ 8, filed January 18, 2012.)

The Court agrees with the Secretary. The Note expressly describes the manner of repayment, stating "Payment shall be made at the **Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing**...or any other place as Lender may designate in writing by notice to Borrower." (Note, ¶ 3(B)) (emphasis in original). The "Lender" here is unambiguously identified as "the Secretary of Housing and Urban Development and it's [sic] successors and assigns." (*Id.* at ¶ 1.)

Petitioner has not alleged that HUD ever assigned its interest in the Note to Chase or the title company, and Petitioner has offered no evidence of such an assignment. I find that, at all relevant times, HUD remained the Note's holder. Petitioner was therefore obligated to repay the debt in the manner prescribed on the Note.[1]

Petitioner's third argument asserts that the debt no longer exists because Chase sent him a letter informing him that "the loan and all associated liens with the mortgage had been satisfied." (Pet'r's Second Resp., ¶ 10.) For Petitioner not to be held liable for the subject debt, he must submit evidence of either (1) a written release from HUD

[1] To the extent Petitioner can prove payment of the debt to Chase or the title company, he would of course be free file a claim against these entities in the proper court. Although Petitioner sought leave to serve subpoenas on both parties to compel the release of certain documents, his motions were denied by this Court. (*See* Ruling and Order, issued November 10, 2011; Ruling and Order, issued November 30, 2011.) As explained in the prior rulings, no statute grants the Court subpoena authority in the circumstances of this proceeding, and the material Petitioner sought was not shown to have been sufficiently relevant and material to Petitioner's liability for the debt on this case.

showing that Petitioner is no longer liable for the debt; or (2) evidence of valid or valuable consideration paid to HUD to release her from her obligation. *Charles E. Simpson and Elizabeth Mary Jackson*, HUDOA No. 12-M-NY-PP18 (April 19, 2012) at 3; *Terri (Padgett) Luck*, HUDOA No. 08-M-CH-JJ36 (November 25, 2008) at 3; *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); *Ann Zamir (Schultz)*, HUDBCA No. 99-A-NY-Y155 (October 4, 1999).

Petitioner contends that the letter from Chase specifically included the Subordinate Note, and thus constitutes written release of his debt. (Pet'r's Second Resp., ¶ 10.) For several reasons, the Court disagrees.

First, nowhere in the substantial record of this case has Petitioner offered this letter into evidence. It is well-settled that "assertions without evidence are not sufficient to prove that the debt is not due or not legally enforceable." *In re Velazquez*, HUDBCA No. 02-C-CH-CC049 (September 25, 2003) (citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300).

Second, even if Petitioner had introduced the letter into evidence, the Secretary correctly notes that this alone would not have released Petitioner from his liability to HUD. (Supp. Sec'y Stat., ¶ 7.) As discussed above, HUD never assigned the Subordinate Note to Chase. Thus, Chase was never authorized to release Petitioner from the debt.

Petitioner apparently mistakes Chase as the "lender" for purposes of both the primary mortgage and the Subordinate Note. This is incorrect. Chase was the lender for the primary mortgage only, which HUD concedes was paid in full. Indeed, the payment of the primary mortgage is the very event that made the Subordinate Note become immediately due and owing, per the terms of the Note. Petitioner's alleged letter from Chase may well have referred only to the liens associated with the primary loan.

Petitioner's claim that the Subordinate Mortgage was "addressed to Chase Manhattan Mortgage Corporation," and therefore identified Chase as the lender, is also misplaced. (Pet'r's Second Resp., ¶ 10.) The document clearly states in the second paragraph that "[T]his Security Instrument is **given to the Secretary of Housing and Urban Development**," followed by the word "Lender" in parentheses. (*See* Secretary's Response in Opposition to Petitioner's Motion for Issuance of Subpoenas, Ex. A, p. 1, filed October 19, 2011) (emphasis added.) Both the Subordinate Mortgage and Subordinate Note, then, provide clear evidence that the Secretary, not Chase, is the Lender for purposes of the alleged debt. Accordingly, I find that Petitioner was not released from the alleged debt.

Petitioner next argues that the Secretary has not provided any proof that the alleged debt was not satisfied pursuant to the 2004 property sale. (Pet'r's Response ¶ 20.) This argument, however, misapprehends the appropriate burdens of proof. In an administrative offset action, it is the Petitioner's burden to prove that the debt is not past

due or not legally enforceable. 24 C.F.R. § 17.152(b). Petitioner's attempt to shift the burden to the Secretary is ineffectual.

Next, Petitioner states that he filed for bankruptcy protection in the Eastern District of New York in 2006 and in 2007. (Pet'r's Second Resp., ¶ 16.) He contends that HUD was therefore prohibited from pursuing repayment of the alleged debt, or from contacting him seeking payment. (*Id.* at ¶¶ 17-18.)

In response, the Secretary points out that, by Petitioner's own admission, he did not list HUD as a creditor in either proceeding. (Supp. Sec'y Stat., ¶ 10 (citing Pet'r's Second Resp., ¶ 22).) Consequently, neither proceeding discharged the alleged debt. As HUD was not listed as a creditor in the bankruptcy proceedings, the Secretary was not prohibited from seeking repayment of the debt by administrative offset or other authorized means.

Lastly, Petitioner contends that the debt is not legally enforceable because HUD has failed to follow several procedural guidelines designed to protect alleged debtors. (Pet'r's Second Resp., ¶ 25.) Specifically, Petitioner challenges the Secretary's assertion that HUD attempted to contact Petitioner regarding the debt prior to initiating the offset action. (*Id.*) He also references the Debt Collection Improvement Act and HUD guidelines, which require HUD to make reasonable efforts to exhaust other available debt collection measures. (*Id.* at ¶ 27.) Petitioner contends that these requirements could not have been followed, as he was unaware of the existence of the debt until the initiation of this action in 2011.

The Secretary did not substantively respond to Petitioner's procedural arguments, other than a blanket statement that it "has followed its policies and procedures for servicing delinquent debt and has provided due process to Petitioner." (Supp. Sec'y Stat., Ex. A, Supplemental Declaration of Brian Dillon.) However, it is clear from the record that Petitioner did indeed receive prior notice of the debt and an opportunity to repay well in advance of the offset action.

Petitioner's admitted receipt of a demand letter from Morris-Griffin Corporation in September, 2005, directly contradicts his insistence that he was not made aware of the subject debt until 2011. (Pet'r's Second Resp., ¶ 13, Ex. B.) Morris-Griffin is a private collections company used by HUD to pursue delinquent accounts. The subject line of the 2005 demand letter states "Demand for HUD Partial Claim Mortgage/Deed of Trust." (Pet'r's Second Resp., Ex. B.) Petitioner therefore had actual knowledge of the debt in 2005, before he filed either bankruptcy proceeding and six years before HUD instituted the present offset action. The demand letter represents a valid attempt by HUD to collect the debt without resorting to administrative offset. As such, HUD has complied with all necessary procedural rules.

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 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.

SO ORDERED.

H. Alexander Manuel
Administrative Judge

May 2, 2012