

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

In the Matter of:

MICHELLE MORRELL,

Petitioner.

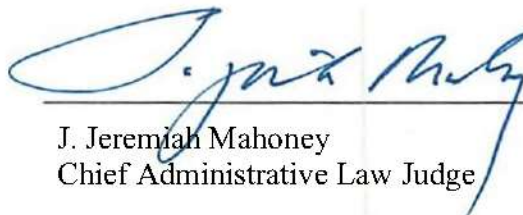
23-AM-0125-AO-033
(Claim No. 7-210207070A)

July 16, 2024

NOTICE OF TRANSFER

Due to the retirement of Administrative Judge H. Alexander Manuel, the above-captioned matter is reassigned to Administrative Law Judge Alexander Fernández-Pons for adjudication in accord with applicable statutes and regulations.

So **ORDERED**,



J. Jeremiah Mahoney
Chief Administrative Law Judge

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DECISION AND ORDER

This matter is before the Tribunal upon a request for hearing filed by Michelle Morrell (“Petitioner”) on July 13, 2023, pursuant to 24 C.F.R. § 17.69(a), concerning an alleged debt that the United States Department of Housing and Urban Development (“HUD” or “the Secretary”) seeks to collect from Petitioner via administrative offset under 31 U.S.C. § 3716. In her *Request for Hearing* (“Request”), Petitioner contests the existence of the debt, claiming the debt was paid in full when she paid off her primary mortgage in April 2022. The Secretary, however, disputes that Petitioner’s debt to HUD was paid when she paid off her primary mortgage, and requests a finding that Petitioner’s debt is past due and legally enforceable.

Upon consideration of the record, this Tribunal finds that Petitioner’s satisfaction of her primary mortgage did not release her from the obligation to repay her debt to HUD. Thus, Petitioner’s debt is past due and legally enforceable such that Petitioner is indebted to the Secretary for the full amount owed.

LEGAL FRAMEWORK

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 Office of Hearings 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 judges of this Tribunal, 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 debtor has the right to review the Secretary’s case and present their own evidence that all or part of the debt is not past due or not legally enforceable. See 24 C.F.R. §§ 17.69(a)-(b). This Tribunal will then review the evidence to determine whether, by a preponderance of the evidence, all or part of that debt is past due and legally enforceable. See id. § 17.69(c). Thereafter, the Tribunal must issue a written decision that constitutes the final agency decision with respect to the past due status and enforceability of the debt. Id. § 17.73(a).

FINDINGS OF FACT

On April 27, 2016, to prevent foreclosure, HUD advanced funds in the amount of \$29,501.27 to Petitioner's FHA-insured lender to bring the mortgage current. In exchange for such funds, Petitioner executed a Promissory Note ("Subordinate Note") in favor of the Secretary.

The terms of the Subordinate Note required payment on or before May 1, 2046, or when the first of the following events occurred:

- i. the borrower has paid in full all amounts due under the Primary Note and related mortgage, deed of trust, or similar Security Instruments insured by the Secretary; or
- ii. the maturity date of the Primary Note has been accelerated; or
- iii. the Primary Note and related mortgage, deed of trust, or similar security instrument are no longer insured by the Secretary; or
- iv. the property is not occupied by the purchaser as his or her principal residence.

On April 29, 2022, the FHA-insured lender indicated that Petitioner's primary mortgage was paid in full, and the FHA mortgage insurance was subsequently terminated. As such, Petitioner's debt to HUD became due and payable pursuant to the terms of the Subordinate Note. However, Petitioner did not repay the Subordinate Note as required. The Secretary has made efforts to collect this debt but has been unsuccessful. The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$29,501.27 as the unpaid principal balance as of July 30, 2023;
- ii. \$98.28 as the unpaid interest on the principal balance at 1.0% per annum through July 30, 2023; and
- iii. \$1,828.25 as unpaid penalties and administrative costs as of July 30, 2023; and
- iv. interest on said principal balance from August 1, 2023, at 1.0% per annum until paid.

A Notice of Intent to Collect by Treasury Offset ("Notice") dated May 15, 2023, was sent to Petitioner at her last known address, pursuant to 24 C.F.R. § 17.65.

DISCUSSION

As noted *supra*, Petitioner may present evidence to demonstrate that all or part of the debt is not past due or legally enforceable. 24 C.F.R. §§ 17.69(a)-(b). In this case, Petitioner has produced a Satisfaction of Mortgage from the City of Tampa ("Tampa") and a Satisfaction of Mortgage from Mortgage Electronic Registration Systems, Inc. ("MERS") in support of her claim. Petitioner contends that her debt to HUD was paid in full as a result of her transactions with Tampa and MERS.

"For Petitioner not to be held liable for the full amount of the subject debt, there must be either a release in writing from the former lender explicitly relieving Petitioner's obligation, 'or

valuable consideration accepted by the lender' indicating intent to release." Teresa Holder, HUDOA No. 22-VH-0097-AG-069 (December 21, 2023) (citing Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986)). Here, Petitioner has presented neither a release from HUD discharging her from her obligation to repay the debt, nor evidence of valuable consideration accepted by HUD. The Satisfactions of Mortgage Petitioner produced only confirm that Petitioner paid off her mortgages with MERS and Tampa, both of which are separate and distinct from her debt to HUD.

The Secretary's right to collect the alleged debt emanates from the terms of the Note, not from representations made by the primary lender. Vicki Arnold, HUDOA 19-AM-0090-AO-033 (January 13, 2022) (citing Bruce R. Smith, HUDBCA No. 07-A-CH-AWG-11 (June 22, 2007)). When Petitioner signed the Subordinate Note, she became legally obligated to pay the debt to HUD according to the terms of the Note, one of which states: "In return for a loan received from Lender, Borrower promises to pay the principal sum of [\$29,501.27], to the order of Lender ... [when] the Note and related mortgage, deed of trust or similar Security Instrument are no longer insured by the Secretary." As such, when Petitioner paid off her primary FHA-insured mortgage, as evidenced by the Satisfactions of Mortgage, the FHA mortgage insurance was terminated and Petitioner's debt to HUD became due and payable. Thus, the satisfaction of Petitioner's mortgages with MERS and Tampa did not release her from the obligation to pay her debt to HUD. Rather, they caused her debt to HUD to become immediately due.

Further, Petitioner provided no evidence of valuable consideration accepted by HUD. The Subordinate Note expressly directs Petitioner to make payment at the "U.S. Department of HUD c/o Novad Management Consulting ... or any such other place as Lender may designate in writing by notice to Borrower." Petitioner did not produce evidence of payment made at the stated address, nor did she provide evidence of a written notice from HUD designating either MERS or Tampa as the place of payment. Moreover, Petitioner failed to provide documentary evidence that any of the funds paid to MERS or Tampa in the payoff transactions were given to HUD in consideration of her debt. Therefore, Petitioner's debt remains outstanding.

This Tribunal has long held that "assertions without evidence are insufficient to show that the debt claimed by the Secretary is not past due and legally enforceable." Sara Hedden, HUDOA No. 09-H-NY-AWG95 (July 8, 2009) (quoting Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Because Petitioner has provided no evidence that her debt to HUD has been paid in full or that HUD has released her from the obligation to repay the debt, the Tribunal finds that Petitioner's claim fails for lack of proof.

ORDER

For the reasons set forth above, this Court finds the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the full amount claimed by the Secretary. 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 Order imposing the *Stay of Referral* of this matter to the U.S. Department of the Treasury for administrative offset, imposed on July 14, 2023, is **VACATED**.

SO ORDERED,

**ALEXANDER
FERNANDEZ-
PONS**

Digitally signed by: ALEXANDER
FERNANDEZ-PONS
DN: CN = ALEXANDER
FERNANDEZ-PONS C = US O = U.S.
Government OU = Department of
Housing and Urban Development,
Office of the Secretary
Date: 2024.07.16 14:26:05 -04'00'

Alexander Fernández-Pons
Administrative Law Judge

Finality of Decision. Pursuant to 31 C.F.R. § 285.11(f)(12), this constitutes the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. § 701 *et seq.*).