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

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| In the Matter of:<br><br>**Kimberly Thomas**,<br><br>Petitioner. | 23-VH-0101-AO-025<br><br>7-210206330A<br><br>July 16, 2024 |

## DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on May 23, 2023, by Kimberly Thomas ("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, as amended (31 U.S.C. 3720A), authorizes federal agencies to use administrative offsets as a mechanism for the collection of debts allegedly owed to the United States Government.

## JURISDICTION

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 administrative judges of this Court, in accordance with the procedures set forth at 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.

## PROCEDURAL HISTORY

Pursuant to 24 C.F.R. § 17.81(a), on May 25, 2023, the Court stayed the issuance of an administrative offset of any federal payment due by Petitioner until the issuance of this written decision. On March 4, 2024, Petitioner filed her *Statement* and additional documentary evidence in support of her position in response to the Court's orders. On May 17, 2024, the Secretary filed a *Statement* along with documentary evidence, in support of her position. This case is now ripe for review.

## FINDINGS OF FACT

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720A because a note in favor of the Secretary is past due.

The Secretary maintains, in her *Statement*, that on February 27, 2020, Petitioner executed and delivered a Subordinate Note to the Secretary in the amount of $62,786.64. To avoid foreclosure, HUD advanced funds to Petitioner's FHA-insured primary mortgage lender, and in exchange for the funds, Petitioner executed a note in favor of the Secretary.

The Subordinate Note does not require periodic payments but mandates the full repayment of the principal balance upon the earlier of: (1) March 1, 2050; (2) payment in full of the primary note and related mortgage; (3) the maturity date of the primary note has been accelerated; (4) the note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary; or (5) the property securing the note is no longer used as Petitioner's primary residence.

On April 25, 2022, Petitioner's primary mortgage was paid in full, and the FHA mortgage insurance was terminated by the lender. Therefore, payment to HUD became due pursuant to paragraphs 4(a)(i) and (iii) of the Subordinate Note. The Secretary has made efforts to collect this debt from the Petitioner but has been unsuccessful. Petitioner is justly indebted to the Secretary in the following amounts:

(a) $62,786.64 as the unpaid principal balance as of April 30, 2024;
(b) $732.20 as the unpaid interest on the principal balance at 1% per annum through April 30, 2024; and
(c) $3,832.03 as the unpaid penalties and administrative costs as of April 30, 2024; and
(d) interest on said principal balance from May 1, 2024, at 1% per annum until paid.

Pursuant to 24 C.F.R. § 17.65, a Notice of Intent to Initiate Administrative Offset Proceedings ("Notice") dated April 24, 2023, was sent to Petitioner. The Secretary is requesting a finding that the Petitioner's debt is past due and legally enforceable; and that the stay of referral of this matter to the U.S. Department of Treasury for collection by Treasury Offset be vacated, so that administrative offset collection may proceed against Petitioner.

## DISCUSSION

Petitioner denies the existence and enforceability of the subject debt. She claims first that she has no knowledge of the loan because the debt was not discovered during the title search to refinance her home; and second, that the transaction never should have been approved because, during the refinancing process, the lender misled her.

First, Petitioner contends "I have never heard of a HAMP loan. [**Nowhere] in the paperwork that I have does it state anything about a HAMP loan or its terms.** Or is there any signed paperwork for a HAMP loan. This has never been spoken to me about. I was never told anything about a HAMP loan or how it works. As the letter that was sent to me states 'we understand this may be a surprise to you'." Petitioner's argument that she had no knowledge of the subject debt does not have the legal effect of discharging her from liability for the same. Case law precedent has established that a party who has signed a contract may not avoid obligations under the contract by alleging that he did not read the contract or that he did not understand the terms. See Upton v. Tribilcock, 91 U.S. 45, 50 (1875) ("[i]t will not do for a man to enter into a contract, and, when called upon to respond to its obligations, to say that he did not read it when he

signed it or did not know what it contained."). Petitioner signed and executed the Note herein and is therefore bound by the terms contained within the contract, including the terms of repayment.

The Subordinate Note in this case serves as a separate and distinct debt from the primary mortgage. See Catherine Coley, HUDOA No. 16-VH-0147-AG-039 at 3 (July 24, 2017). The language in the Subordinate Note states, unambiguously, that the subject debt becomes due and payable when 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." That is what happened in this case. Petitioner by her own admission acknowledges in her Hearing Request that she "did do a refinance April 2022 and have spoken to my loan officer about this letter and was informed that this debt that is being said that I owe never came ***up*** with title." Based on this premise, Petitioner seems to think that she may be discharged from liability for the subject debt because the debt was not discovered during the title search. Such presumption is in error and ultimately is irrelevant. Only the absence of deeds recorded against Petitioner's home within the "*preceding twenty-four months*" (emphasis added) of the refinance would have been recorded and discovered anyway. The security interest associated with the Subordinate Note predated that twenty-four-month period and is again irrelevant. But what is relevant is that the terms of the contract between the parties, not the results of a title search, are the controlling factors in this case.

In addition to the evidence offered by the Secretary, the Petitioner also offered evidence that included copies of the Subordinate Deed of Trust, Subordinate Note, and refinancing documents that further served as proof that Petitioner was not only aware of the loan documents, but also knew that the loan still existed. To release the Petitioner from her responsibility under the contract, she must prove full satisfaction of the subject debt by providing proof of a written release directly from HUD or proof that there was an exchange of valuable consideration accepted by the HUD to indicate HUD's intent to release Petitioner. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986); see also Hedieh Rezai, HUDBCA No. 04-A-NY-EE016 (May 10, 2004). Here, neither written release nor proof of valuable consideration was offered. When Petitioner paid the primary note in full by refinancing, the Subordinate Note immediately became due and payable. This Court has established that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or unenforceable." Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NYT300 (July 3, 1996)). So in this case, without a written release or valuable consideration for the subject debt, the Court must find that Petitioner's claim fails for lack of proof.

Next, Petitioner contends that the transaction never should have been approved because, during the refinancing process, the lender misled her. In general, "[a] third party's error or negligence does not normally relieve Petitioner of liability for the debt... Petitioner's obligation to pay the debt derives from the terms of the Note." Stephond West, HUDOA No. 17-AM-0026-AG-006 (March 14, 2018) (*citing* Bryan McClees, HUDOA No. 17-AM-0037-AO-010 (February 14, 2018) (a third party's negligence does not normally relieve Petitioner of liability for the debt); Cydine A. Taylor, HUDOA No. 14-AM-0063-AO-005 (October 22, 2014) (Petitioner's obligation to pay the debt derives from the terms of the Note).

In another similar case, Judith Herrera, HUDOA No. 12-M-CH-AWG27 (July 12, 2012), this Court found that a statement to Petitioner by a title company that "all was okay…petitioner

did not owe debt" was insufficient evidence to prove that the HUD debt had been paid. Likewise in this case, Petitioner's allegations that she was misled or misunderstood by the lender are, alone, insufficient as proof that the debt is unenforceable. The law imposes on the Petitioner an obligation to thoroughly read and understand an agreement at the time of signing the Note and not later claim, after the Note is signed, that she was deceived or misled by the lender. See In re Brenda Mottler-Race, HUDOA No. 17-VH-0124-AO-067 (August 22, 2019) ("[m]isunderstanding the terms of a contract does not serve as a basis for releasing debtors from the terms of a contract.") Here, the Court has reviewed the record, and credible evidence has been presented by the Secretary and by the Petitioner. This Court is totally convinced that the subject debt exists and remains fully enforceable against Petitioner despite her allegations. As a result, the Court deems the Petitioner's claims to be without merit.

## ORDER

Based on the foregoing, Petitioner must pay the debt that is the subject of this proceeding.

The *Order* imposing the stay of referral of this matter to the U.S. Department of Treasury on May 25, 2023, for administrative offset is **VACATED**. It is hereby

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

SO ORDERED.

Vanessa L. Hall
Administrative Judge

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**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*.).