

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

In the Matter of:

**Sean Vassar,**

Petitioner.

Docket No. 23-VH-0109-AO-027

Claim No. 7-210198960A

October 16, 2024

**DECISION AND ORDER**

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on June 1, 2023, by Sean Vassar (“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 June 26, 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 June 26, 2023, Petitioner filed his *Statement* and additional documentary evidence in support of his position in response to the Court’s orders. On October 10, 2023, 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.

According to the Secretary, on or about April 19, 2021, Sean Vassar (“Petitioner”) executed and delivered to the Secretary a *Subordinate Note* (the “Note”), dated April 9, 2021, in the principal amount of \$13,227.52.

As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner’s FHA-insured primary mortgage lender; and in exchange for such funds, Petitioner executed the Note in favor of the Secretary. By terms of the Subordinate Note, the amount to be repaid thereunder becomes due and payable “[o]n September 01, 2049 or, if earlier, when the first of the following events occurs: (i) borrower has paid in full all amounts due under the primary note and related mortgage, deed of trust or similar security instrument insured by the Secretary; or (ii) the maturity date of the primary note has been accelerated; or (iii) the note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary.”

On or about February 11, 2022, the Secretary states that the Petitioner’s primary mortgage was paid in full and the FHA mortgage insurance was terminated, an event that caused the Note to become due. Accordingly, HUD has attempted to collect the amounts due under the Note, but Petitioner remains indebted to HUD.

A Notice of Intent to Collect by Treasury Offset, dated February 27, 2023, was mailed to Petitioner’s last known address. Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$13,227.52 as the unpaid principal balance as of August 31, 2023;
- b. \$88.16 as the unpaid interest on the principal balance at 1.0% per annum through August 31, 2023;
- c. \$848.58 as the unpaid penalties and administrative costs through August 31, 2023; and
- d. interest on said principal balance from September 1, 2023, at 1.0% per annum until paid.

The Secretary further states that Petitioner has provided no evidence that HUD has been repaid in full, or that Petitioner was otherwise legally released by HUD from his obligation to repay the debt. As a result, the Note remains unsatisfied, and the debt is enforceable against Petitioner.

Based on the foregoing, the Secretary requests a finding that the Petitioner’s debt is past due and legally enforceable; and that stay of referral of this matter to the Department of the Treasury for collection by Treasury Offset be vacated.

### **DISCUSSION**

Petitioner contends that he does not owe the subject debt because it was paid in full at settlement when he sold the property. As support, Petitioner presents as evidence copies of email communications between Petitioner and the primary mortgage lender, Mr. Cooper; and a Seller’s Estimated Settlement Statement that, according to Petitioner, allegedly reflects payoff amounts for the primary debt and the subject debt.

In his *Statement* Petitioner claims that the estimated settlement statement shows that “the \$13,227.52 payoff of second mortgage as subtracted as debit from sale.” As further support, Petitioner offers “a statement from Denise Clark – First Centennial Title Company – stating Mr. Cooper [primary mortgage lender] confirmed that ‘both loans were included in the payoff amounts....’” After reviewing the record, this Tribunal finds that the evidence presented by Petitioner fails to meet his burden of proof.

In this case, Petitioner relied on the truth of statements made by the primary mortgage company, Mr. Cooper, to the title company, First Centennial, regarding the payment status of the subject debt. This error in judgement proved to be detrimental to the Petitioner because ultimately the onus falls on Petitioner to ensure that the subject debt was paid in full. See John Tipton, HUDOA No. 23-VH-0153-AO-083, September 12, 2024 (held that the onus falls on Petitioner, not on PennyMac Loan Services LLC, to produce evidence that the subject debt amount is in error or not past due).

Petitioner executed the Note and became bound by its terms and the terms of repayment. Because Petitioner was primarily responsible for the payment of the subject debt, the actions, inactions, or statements of any primary mortgage lender or title company are irrelevant. While Petitioner apparently did not have this understanding initially, case law precedent has long 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 to apply to him. 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.”). So, “[a] third party's error or negligence does not 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); see also, Anna Bolton, HUDOA No. 23-VH-0146-AG-077 (September 13, 2024) (Petitioner is primarily responsible for payment of the subject debt regardless of the actions or inactions of the primary mortgage lender).

In this case, for Petitioner not to be held liable, he must produce either a release in writing from HUD in which HUD explicitly states that Petitioner is relieved from his obligation to pay under the terms of the Note, or, in the absence of such proof, Petitioner must produce evidence of “valuable consideration accepted by the lender” of the subject debt (herein HUD) that indicates HUD’s intent to release Petitioner. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). Petitioner failed to produce either in this case.


Case law precedent has established 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). As a result, in the absence of such evidence herein, this Tribunal must find Petitioner is responsible for full payment of the subject debt.

## **ORDER**

Based on the foregoing, the Order imposing the stay of referral of this matter on August 21, 2023 to the U.S. Department of the Treasury for administrative offset is hereby **VACATED**.

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.*).