

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

In the Matter of:

GISELA GONZALEZ FIGUEROA,

Petitioner.

24-AF-0015-AO-003
(Claim No. 7-210221460A)

December 6, 2024

DECISION AND ORDER

This matter is before the Tribunal upon a *Request for Hearing* (“*Request*”) filed by Gisela Gonzalez Figueroa (“Petitioner”) on October 31, 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 the *Request*, Petitioner contests the existence of the debt, claiming it was paid in full. The Secretary, however, disputes that Petitioner’s debt to HUD was paid and requests a finding that the debt is past due and legally enforceable.

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 Tribunal has jurisdiction to determine whether Petitioner’s alleged debt is past due and legally enforceable pursuant to 24 C.F.R. §§ 17.61 *et seq.*

The debtor has the right to review the Secretary’s case and present the debtor’s own evidence. See 24 C.F.R. § 17.69(a)-(b). This Tribunal will then review the written record of the proceeding to determine whether, by a preponderance of the evidence, all or part of that debt is past due and legally enforceable. Id. at § 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

HUD advanced funds to Petitioner’s primary lender to bring Petitioner’s primary mortgage current and avoid foreclosure of Petitioner’s property. In exchange for the foreclosure relief, Petitioner executed and delivered to the Secretary a Promissory Note (“HUD Note”) in the amount of \$6,144.28. The terms of the HUD Note required payment on October 1, 2022, or earlier when the first of the following events occurred:

- i. 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 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 the principal residence.

The HUD Note also required that payment be made at “the Office of Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW Washington DC 20410 or any such other place as Lender may designate in writing by notice to Borrower.”

On September 24, 2022, Petitioner’s primary lender informed HUD that Petitioner’s primary mortgage was paid in full. As such, the Federal Housing Administration mortgage insurance related to the primary mortgage was terminated, and Petitioner’s debt to HUD became due and payable pursuant to the terms of the HUD Note. However, the HUD Note was not paid as required.

Petitioner subsequently received notice of HUD’s attempt to obtain payment of this debt via administrative offset. The Secretary has made efforts to collect repayment of this debt in full but has been unsuccessful. The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$6,144.28 as the unpaid principal balance;
- b) \$46.08 as the unpaid interest on the principal balance at 3% per annum;
- c) Interest on said principal balance from November 1, 2023, at 3% per annum until paid.

DISCUSSION

Petitioner does not dispute entering into an agreement to repay HUD for the funds HUD advanced.¹ Rather, Petitioner argues that the subject debt was paid in full and offers, as evidence, copies of documents from United Surety & Indemnity Company, which insured Petitioner’s property.

As noted *supra*, Petitioner may present evidence to demonstrate that all or part of the debt is not past due. 24 C.F.R. §§ 17.69(a)-(b). “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.” See *In re Teresa Holder*, HUDOHA No. 22-VH-0097-AG-069 (Dec. 21, 2023); *In re Eric Racher*, HUDOHA No. 17-VH-0021-AO-003 (Oct. 25, 2017); *In re*

¹ This agreement is memorialized by the HUD Note, which HUD has provided as evidence of the debt in this case.

Cecil F. and Lucille Overby, HUDOA No. 87-1917-G250 (Dec. 22, 1986).² The documents submitted by Petitioner indicate that she made two payments in the amount of \$178.00 each to United Surety & Indemnity Company for insurance policies related to the *Programa de Vivienda*. However, these documents do not prove that Petitioner made payments to HUD to satisfy the debt in this case or that HUD has otherwise released Petitioner of her liability to repay the debt. Absent any such evidence, the Tribunal finds that the subject debt is past due and legally enforceable against Petitioner in the amount claimed by the Secretary.

ORDER

For the reasons set forth above, the Tribunal 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 amount 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 November 2, 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: 2024.12.06 13:01:57 -05'00'

Alexander Fernández-Pons
Administrative Law Judge

² See also *In re Manuel Castro*, HUDOHA No. 17-VH-0180-AG-059 (Jan. 23, 2018); *In re Tammy Chance*, HUDOHA No. 19-VH-0113-AO-039 (July 15, 2019); *In re Daniel and Kerri Vincent*, HUDOHA No. 17-VH-0125-AO-068 (Aug. 22, 2018); *In re Ralph and Pricella Leavers*, HUDOHA No. 18-VH-0103-AG-050 (Sep. 10, 2019); *In re Christopher Dyhrkoff*, HUDOHA No. 17-VH-0163-AG-045 (Mar. 8, 2018); *In re Cynthia Rivera*, HUDOHA No. 18-VH-0115-AG-059 (June 6, 2019); *In re Lisa Richardson*, HUDOHA No. 18-VH-0174-AG-087 (Aug. 13, 2019); *In re Samantha Richardson*, HUDOHA No. 23-AM-0104-AG-056 (July 16, 2024); *In re Nicole Ready*, HUDOHA No. 18-VH-0041-AG-023 (Apr. 8, 2019); *In re Melissa Stahovich*, HUDOHA No. 17-VH-0211-AO-078 (Apr. 11, 2019); *In re Lourdes Ortiz*, HUDOHA No. 17-VH-0120-AO-064 (June 12, 2018); *In re Carol Gilbert-Whitman*, HUDOHA No. 17-VH-0078-AO-027 (Apr. 23, 2018); *In re Brady and Samantha Urbanek*, HUDOHA No. 18-VH-0117-AG-061 (Mar. 7, 2019); *In re Malissa Edmond*, HUDOHA No. 17-VH-0200-AO-077 (Mar. 4, 2019); *In re Tammie Fike*, HUDOHA No. 18-VH-0025-AG-015 (May 7, 2019); *In re Shad Saromines*, HUDOHA No. 19-VH-0063-AO-025 (Apr. 22, 2019); *In re James P. Minchener*, HUDOHA No. 18-VH-0156-AO-050 (Nov. 15, 2019).

Finality of Decision. Pursuant to 24 C.F.R. § 17.73(a), this constitutes the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. § 701 *et seq.*).