

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

In the Matter of:

Estate of Kyle Hewitt,

Petitioner.

24-VH-0007-AO-002

7-210218790A

July 15, 2024

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing* (“Hearing Request”) filed on September 20, 2023, by James Trent Whiting (“Counsel for Debtor’s estate”) on behalf of Kyle Hewitt (“Debtor”), 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 Debtor’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 October 20, 2023, the Court stayed the issuance of an administrative offset of any federal payment due by Debtor’s estate until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral (Notice of Docketing)* at 2. On May 29, 2024, the Secretary filed her *Statement (Sec’y. Stat.)* 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 March 10, 2016, Debtor executed and delivered a Promissory Note (the “Note”) to the Secretary in the amount of \$46,303.55. To avoid foreclosure, HUD advanced funds to Debtor’s FHA-insured primary mortgage lender, and in exchange for the funds, Debtor executed a note in favor of the Secretary.

The Note does not require periodic payments but mandates the full repayment of the principal balance upon the earlier of: (1) May 1, 2046; (2) payment in full of the primary note and related mortgage; (3) the maturity date of the primary note has been accelerated; or (4) the note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary.

On August 29, 2022, Debtor’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 Promissory Note. The Secretary has made efforts to collect this debt but has been unsuccessful. Debtor is justly indebted to the Secretary in the following amounts:

- (a) \$46,303.55 as the unpaid principal balance as of April 30, 2024;
- (b) \$1,157.60 as the unpaid interest on the principal balance at 3% per annum through April 30, 2024; and
- (c) interest on said principal balance from May 1, 2024, at 3% per annum until paid.

Pursuant to 24 C.F.R. § 17.65, a Notice of Intent to Initiate Administrative Offset Proceedings (“Notice”) dated August 21, 2023, was sent to Debtor’s last-known address. The Secretary is requesting a finding that the Debtor’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 Debtor.

DISCUSSION

Debtor’s estate denies the existence and enforceability of the subject debt because an estate claim is now time barred and the debt associated with the property had been paid as a release was filed in this matter. As support, Debtor’s estate offered into evidence a copy of an *Order and Decree Establishing Right and Title to Real and Personal Property* issued by the Ninth Judicial District, Fremont County, on November 30, 2020, and a *Certificate of Release* dated September 1, 2022.

The Secretary may pursue a valid claim against the estate of a deceased debtor. Walter Zaleski, HUDBCA 90-5325-L701 (July 9, 1990). Although the Debtor’s estate has been probated, HUD can pursue a claim against the estate. Having the right to title has no bearing on the Debtor’s promise to pay because the lien on the property is merely a security interest while the promise *and* obligation to pay arises from the Note. The Note in this case is 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 of the Note clearly states that the subject debt becomes due and payable when “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 happened in this case. The evidence offered by Debtor’s estate does not provide evidence of a release of Debtor’s

obligation by HUD and demonstrates that only the Debtor's primary FHA-insured mortgage was satisfied.

For Debtor to prove full satisfaction of the subject debt, there must be either a release in writing directly from the former lender (herein HUD) explicitly relieving Debtor's obligation to HUD, "or valuable consideration accepted by the lender" indicating intent to release. 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, Counsel for Debtor's estate failed to provide either in this case. When the primary mortgage was paid in full, the Note immediately became due and payable. Without evidence from Debtor of either a release or valuable consideration for the subject debt, Debtor remains obligated to pay in full the subject debt. This Court has long held 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)). Therefore, the Court finds that Debtor's claim fails for lack of proof.

ORDER

Based on the foregoing, Debtor's estate 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 October 20, 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

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.*).