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

In the Matter of: **William T. Blackman,** Petitioner.	Case No. 12-VH-NY-AO-48 Claim No. 7-208003280B June 6, 2013

DECISION AND ORDER UPON REOPEN

Petitioner was notified, pursuant to 31 U.S.C. §§ 3716 and 3720A, that the Secretary of the U.S. Department of Housing and Urban Development intended to seek administrative offset of any federal payments due to Petitioner in satisfaction of a delinquent and legally enforceable debt allegedly owed to HUD. On September 11, 2012, Petitioner requested a hearing concerning the existence, amount, or enforceability of the alleged debt.

Applicable Law

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. The administrative judges of the Office of Hearings and Appeals, 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 whether the alleged debt is past due and legally enforceable.

Procedural Background

A *Notice of Docketing, Order, and Stay of Referral* was issued by this Court on September 13, 2012, in response to Petitioner's request for a hearing. The Court ordered Petitioner on three occasions to produce evidence in support of his position and, based upon the record then in existence, Petitioner had failed to comply with any of the Court's orders. See *Notice of Docketing, Order, and Stay of Referral*, dated September 13, 2012; *Order Granting Petitioner's Extension of Time*, dated October 4, 2012; and *Order to Show Cause*, dated November 30, 2012. The Court thereafter issued an *Order of Dismissal* sua sponte on December 11, 2012, as Petitioner's claim failed for lack of proof.

On December 17, 2012, in an e-mail filed with the Court, Petitioner stated that he "did send evidence to the proper address on Oct. 10, [2012] and it was receive[d] by HUD on Oct. 11, [2012]." Petitioner submitted, as support, a copy of a U.S. Postal Service proof of delivery letter along with an attached copy of a mailing label that reflected the signature of the HUD mailroom employee. The mailing label showed the name of the HUD employee who received the package

in the mailroom and the date of receipt for Petitioner's documentary evidence package as October 11, 2012.

In addition, the Court obtained from the HUD mailroom office proof of the October 11, 2012, delivery to verify receipt of Petitioner's documentary evidence by the Office of Hearings and Appeals. On January 16, 2013, such proof was provided in the form of a scanned copy of HUD's Mailroom Delivery Log that showed that the Court's docket clerk at that time had in fact signed for receipt of Petitioner's documentary evidence on October 11, 2012. The docket clerk (now retired) had failed to add Petitioner's documentary evidence to the case file to acknowledge receipt of such evidence and also had failed to deliver Petitioner's package to the administrative judge for review. As a result, Petitioner's evidence was never presented to the Court for review as required under 24 C.F.R. § 17.69(c).

After examining proof of delivery, the Court determined that Petitioner had met the filing requirements under 24 C.F.R. § 17.69(b) by submitting his documentary evidence in a timely manner. Petitioner's e-mail was deemed thereafter to be a *Motion to Reopen*. The Court granted Petitioner's *Motion* on the grounds that the docket clerk's clerical oversight constituted a legitimate procedural error.

In addition, the *Order of Dismissal*, issued by the Court on December 11, 2012, was rescinded, the proceeding was stayed, and Petitioner was granted leave to file on or before February 15, 2013 documentary evidence in support of his position. On February 12, 2013, Petitioner submitted such documentary evidence. In response to an Order issued by the Court, the Secretary, through counsel, filed his Statement, along with documentary evidence, on March 13, 2013. The case is now ripe for review by the Court.

Findings of Fact

On November 30, 2006, "HUD's Office of Administrative Law Judges issued a Default Decision and Order holding Gardner Ridge Associates (a North Carolina General Partnership); S. Alan Albright (General Partner); and Petitioner, William Thomas Blackman, Jr. (General Partner) jointly and severally liable to HUD for payment of a civil money penalty of $62,500 for failing to file audited financial statements for Gardner Ridge Apartments, a HUD-insured multi-family property." *Secretary's Statement (Sec'y. Stat.),* dated March 13, 2013, Ex. A. The Secretary has made efforts to collect this debt from Petitioner, but Petitioner remains delinquent. Petitioner is justly indebted to the Secretary in the following amounts:

(a) $ 62,500.00 as the unpaid principal balance as of February 14, 2013; and,
(b) $ 12,506.28 as the unpaid Administrative Costs and Penalties as of February 14, 2013.

Sec'y., Stat., ¶ 3, Ex. B, *Dillon Declaration (Dillon Decl.)*[1], ¶ 4.

[1] Brian Dillon is Director of the Asset Recovery Division of HUD's Financial Operations Center.

A Notice of Intent to Collect by Treasury Offset ("Offset Notice"), dated August 6, 2012, was sent to Petitioner. *Sec'y. Stat.*, ¶ 4, Ex. B, *Dillon Decl.*, ¶ 5.

Discussion

Pursuant to 24 C.F.R. § 17.69 (b)–(c), Petitioner has the initial burden of proof to produce evidence to show, by a preponderance of the evidence, that all or part of the alleged debt is not past due or not legally enforceable. In this case, Petitioner does not deny that the subject debt is owed or past due but instead challenges the legal enforceability of the subject debt. Petitioner claims: 1) he is no longer liable for the subject debt because he terminated his partnership with Gardner Ridge Associates (GRA); and, 2) the notices he received regarding the subject debt were "inadequate." Petitioner also raises, as a separate issue, the insufficiency of notice in his prior civil money penalty action. *Petitioner's Letter, (Pet'r. Feb. Ltr.)*, dated February 8, 2013.

I. Termination of Partnership

As a preliminary matter, the Court must address whether Petitioner effectively terminated his partnership interest in GRA such that it released Petitioner from his legal obligation to pay the subject debt. Petitioner states that, "I ended my partnership in Gardner Ridge Associates in 2002 due to medical reasons and change of location of residence." *Pet'r. Feb. Ltr.* According to Petitioner, "I transferred my interest to Alan Albright on October 31, 2002," and "HUD's charges are based on inadequate filings by Gardner Ridge Associates which were due March 31, 2004 and March 31, 2005." Id. Petitioner adds, "Since I terminated my involvement in October, 2002, I would request that the claim against me be dropped." Id. Petitioner concludes that he is no longer responsible for the subject debt, "because of not being a partner after 2002" and because he "no longer received the annual K-1 tax benefits from Gardner Ridge Associates." Id.

As support, Petitioner introduces into evidence, for the Court's review, copies of the General Partnership Agreement for GRA (Agreement) he had with his co-partner, the Certificate of Assumed Name for GRA, proof of the 1995 Sale and Assignment of Partnership Interest (1995 Partnership Assignment) from the previous GRA partners to Petitioner, proof of the 2002 Sale and Assignment of Partnership Interest (2002 Partnership Assignment) from Petitioner to his co-partner, the Schedule K-1 Tax Reports[2] (K-1 Reports) from the Schedule B tax returns, and the Operative Report of Petitioner's medical diagnosis along with a medical summary of his condition for the Court's review. *Pet'r. Feb. Ltr.*, Attachments.

The Secretary counters by arguing "[W]hen Petitioner assumed a partnership interest in GRA on May 11, 1995, he became bound by the terms of the Regulatory Agreement executed by GRA and HUD on August 30, 1988." *Sec'y. Stat.*, ¶ 6, Ex. C, ¶ 14. According to the Secretary, paragraph 6 of the Regulatory Agreement states, in pertinent part, that "Owners shall not without the prior written approval of the Secretary: (c) Convey, assign, or transfer any beneficial interest … of any general partner in a partnership owning the property…." *Sec'y. Stat.*, ¶ 7, Ex. C, ¶ 6(c). The Secretary adds that, pursuant to 24 C.F.R. §§ 200.213 and 200.215(e)(2)(ii), "Petitioner and GRA were subject to HUD's Previous Participation Review and Clearance

[2] Petitioner explains that "a schedule K-1 is to report a partner[']s share of the partnership's income, deductions, credits, etc. for the tax year." *Pet'r Feb. Ltr.* 12.

procedures, which apply to both projects insured under the National Housing Act, and [to] general partners having at least a 25 percent interest in the partnership owning the HUD-insured project." *Sec'y. Stat.*, ¶ 8. The Secretary maintains that Petitioner "held a 50 percent interest in GRA" and that "[I]f Petitioner indeed terminated his involvement with the partnership that owned the HUD-insured project, Petitioner was required to file a Previous Participation Certificate (Form HUD 2530) 'at least 30 days prior to the date of any proposed substitution … or proposed participation in a different capacity from that previously approved for the same project' under 24 C.F.R. § 200.217 (a)(12)." *Sec'y. Stat.*, ¶ 10.

The Secretary further states that not only had Petitioner failed to obtain HUD's written consent to the transfer as required under the terms of the Regulatory Agreement and HUD's Previous Participation Review and Clearance procedures, but, Petitioner also "remained in HUD's Active Partners Participation System ('APPS')[3] as a general partner presently responsible for GRA's compliance with its Regulatory Agreement and HUD's rules and regulations." *Sec'y. Stat.*, ¶ 12, Ex. E. According to the Secretary, the information in the APPS was first, "consistent with the ownership information contained in Petitioner's General Partnership Agreement filed with HUD on May 13, 2002," five months prior to the date Petitioner alleges he severed his relationship with GRA; and, second, "consistent with the certification by Petitioner and Albright as general partners of GRA found in the last audited financial statement electronically filed with HUD on March 30, 2003." *Sec'y. Stat.*, ¶ 13, Ex. F. As a result, "there was no reason to question Petitioner's ongoing participation as a general partner with the project." *Sec'y. Stat.*, ¶ 12.

As support, the Secretary introduces into evidence, for the Court's review, copies of the Regulatory Agreement, the General Partnership Agreement for GRA (Agreement), Petitioner's completed APPS 2530 Participant Detail Form, and the Financial Statement Certification for GRA dated March 30, 2003 for the Court's review. *Sec'y. Stat.*, Ex. C-E.

In order to determine whether a partnership has been terminated, it first must be determined whether a partnership even existed. In general, preponderance of the evidence is considered sufficient to establish the existence of a partnership in an action by a third person. See, e.g., Visage v. Marshall, 632 S.W. 2d 667 (Tex. App. 1982). *writ ref. n.r.e. Accord*, Weiner v. Fleischman, 54 Cal. 3d 476, 286 Cal. Rptr., 816 P.2d 892 (1991). Introduction of a written partnership agreement ordinarily would be the clearest and most effective evidence of the intent to be partners, but in this case the partnership agreement alone may not be sufficient. In cases such as the one at hand, other forms of documentary evidence reflecting the partners' intent to share ownership, control, and profits and losses may be presented. For example, documentary evidence such as tax documents, business licenses, or official filings that show that the defendants are licensed or registered to do business together or as members of a partnership may

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[3] "The Active Partners Performance System (APPS) allows HUD's business partners to manage their company and individual participation information and submit their APPS Previous Participation Certification (APPC) (formerly known as form 2530) requests directly to HUD for processing via the Internet." http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/apps/appsmfhm

be presented. See, e.g., Gravois v. New England Insurance Co., 553 So. 2d 1034 (La. App. 1989) (partnership income tax return admitted as evidence of partnership); Beane v. Bowden, 399 So. 2d 1358 (Miss., 1981.) (federal income tax return listing income as partnership income, not as salary, supported finding that defendant was partner and not employee); Miller v. City Bank & Trust Co., NA, 82 Mich. App. 120, 266 N.W. 2d 687 (1978) (filing of business registration papers indicating that business was partnership was prima facie evidence of partnership during time filing was effective but not after registration certificate had expired).

Here, Petitioner admits that he entered into a partnership agreement with his co-partner, S. Alan Albright, "by transfer of interest from J. Watts Roberson and B.P. Albright, Jr. on May 11, 1995." *Pet'r Feb. Ltr.* 1. He also admits that he was "active in the daily operations of GRA until my move from North Carolina to Charleston, SC for business purposes in 1998." Id. He also claims that after he moved he "was less active in Gardner Ridge and the daily operations were handled in North Carolina by Alan Albright. I retired from the Partnership on October 31, 2002." Id. Petitioner not only admitted that a partnership existed but in addition he introduced, as support, a copy of the Agreement for the Court's review.

The Court reviewed the copy of the Agreement provided by Petitioner but questioned its authenticity because it lacked certification by a notary public. After further review of both copies of the Agreement submitted by the respective parties, the Court determined that according to the law in North Carolina, state law governs the effect of notary public's certification of written instruments. North Carolina recognizes a presumption in favor of the legality of an acknowledgment of a written instrument by a certifying officer. See, e.g., Skinner v. Skinner, 28 N.C. App. 412, 222 S.E. 2d 258, *disc. review denied,* 289 N.C. 726, 224 S.E. 2d 674 (1976). To impeach a notary's certification, there must be more than a bare allegation that no acknowledgment occurred. Moore v. Moore, 108 N.C. App. 656, 424 S.E. 2d 673 (1993). In this case, because the Secretary's copy of the Agreement had a notary public's certification dated May 11, 1995 it would be considered a legally acknowledged written instrument by a certifying officer. Because Petitioner's copy of the Agreement lacks the required notary public certification, the credibility and legality of Petitioner's copy of the Agreement is deemed unreliable and insufficient as proof that Petitioner was in partnership with GRA.

Petitioner did, however, introduce more compelling evidence of the existence of a partnership with GRA by providing copies of the Certificate of Assumed Name, the 1995 Partnership Assignment from the previous GRA partners to Petitioner, and the 2002 Partnership Assignment from Petitioner to his co-partner. After reviewing these documents, it is evident that the Certificate of Assumed Name identifies Petitioner as one of the owner/partners of GRA. It is also evident that the 1995 Sale and Assignment of Partnership Interest and the 2002 Sale and Assignment of Partnership Interest show that Petitioner owned an interest as a partner in GRA. *Pet'r Feb. Ltr.* 2, 7. This additional documentation, along with Petitioner's own admissions, has fully persuaded the Court that a partnership in fact existed between Petitioner and his co-partner. But, the question that remains is whether this partnership was actually terminated such that Petitioner was released from his legal obligation to pay the subject debt.

When Petitioner entered into a partnership agreement with GRA the terms of that Agreement became subject to the terms and conditions of the Regulatory Agreement executed by

GRA and HUD. See *Sec'y. Stat.*, Ex. C; Ex. D., ¶ 13(H), Ex. A. The Regulatory Agreement provides, in unambiguous terms, that "Owners shall not *without the prior written approval of the Secretary*: ...(c) Convey, *assign,* or *transfer* any beneficial interest in any trust holding title to the property, or the interest of any general partner in a partnership owning the property, or any right to manage or receive the rents and profits from the mortgaged property." (Emphasis added.) *Sec'y. Stat.*, Ex. C, ¶ 6(c). While Petitioner claims that the assignment of his interest in the partnership was valid, the record does not reflect that Petitioner exercised due diligence in seeking the necessary approval from the Secretary prior to the transfer or assignment of his partnership interest. As a result, it is questionable whether the Petitioner's alleged assignment was effectively executed as a valid termination of the partnership.

Petitioner also was required by HUD's Previous Participation Review and Clearance procedures to file a 2530 Previous Participation Certificate[4] 30 days prior to the date of a proposed substitution or proposed participation in a different capacity from that previously approved. See 24 C.F.R. § 200.217(a)(12). The Secretary provided a copy of Petitioner's APPS Participant Detail Form that had Petitioner listed as an active participant of HUD's APPS as recently as November 9, 2012. Further, a review of the 2530 Previous Participation Certificate submitted by the Secretary again lists Petitioner as an active participant as recently as January 30, 2012. Finally the Financial Statement Certification, also submitted by the Secretary, contains language that states "General Partners' Certification Year Ended 12/31/2002 [.] I hereby certify that I have examined the accompanying financial statements, supplemental information and comments on compliance and internal controls of Gardner Ridge Associates, ... and *to the best of my knowledge and belief, the same is complete and accurate.*" (Emphasis added.) *Sec'y Stat.,* Ex. F. Petitioner's name is reflected on this *Financial Statement* as a general partner and the statement also reflects the financial state of GRA through the year that ended 12/31/2002, three months after Petitioner allegedly terminated his partnership with GRA. To date, Petitioner has failed to produce evidence that otherwise rebuts or refutes the evidence presented by the Secretary.

In addition, Petitioner introduced into evidence copies of K-1 Reports from 2002, the year of his alleged partnership termination, through 2005. *Pet'r Feb. Ltr.* 32-38. As previously indicated, documents generated together during the course of carrying on the business generally will be probative of a partnership, but will not necessarily be conclusive. See, e.g., Brotherton v. Kissinger, 550 S.W. 2d. 904 (Mo. App. 1977) (fact that business does or does not file partnership tax return is not sufficient alone to prove or disprove existence of partnership). Here, Petitioner is not using the K-1 Reports as proof that the partnership existed, but instead, he is using the lack

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6 24 C.F.R. § 200.219 Content of Certification. (a) Each principal who executes the certificate certifies that:
(1) The certificate contains a listing of every assisted or insured project of HUD, Farmers Home Administration and State or local government housing finance agencies *in which the principal has been or is now a principal*;
(2) For a period beginning 10 years prior to the date of the certificate under review and except as shown on the certificate:

(i) No mortgage on a project listed has ever been in default nor has mortgage relief been given;
(ii) There have been no defaults or noncompliances under any conventional construction contract or Turnkey contract of sale in connection with a public housing project;
(iii) *There are no known unresolved findings raised as a result of HUD audits, management reviews or other governmental investigations*;.... (Emphasis added.)

of such documentation as proof that the partnership had terminated. The filing of K-1 Reports on behalf of GRA is, as articulated by Petitioner, a report solely of "a partner[']s share of the partnership's income, deductions, credits, etc. for the tax year." *Pet'r Feb. Ltr.* 32-38. According to Petitioner, because he was no longer in partnership status with GRA and no longer eligible to receive the annual K-1 tax benefits, he should no longer be legally obligated to pay the subject debt. *Pet'r. Feb. Ltr.* 12.

But, the governing regulations for *K-1 Reports* do not govern how the Court determines Petitioner's liability under the terms and conditions of the contractual agreement for the subject debt. Petitioner's assignment of his partnership interest may have, for tax purposes, effectively terminated his interest in the partnership. But, the fact that Petitioner no longer receives annual K-1 tax benefits is not sufficient to prove that the termination of a partnership for tax purposes has effectively released Petitioner from his legal obligation to pay the subject debt.

Finally, Petitioner identified certain health challenges as a basis for terminating his partnership with GRA. The Court reviewed the Operative Report of Petitioner's medical diagnosis and the summary of his medical condition. In North Carolina, a partnership can be dissolved at will at any time, or dissolved by judicial decree if the Court determines certain factors exist.[5] One such factor that may result in dissolution of partnership is if a "partner becomes in any other way incapable of performing his part of the partnership contract." In the instant case, Petitioner claims that his medical condition so debilitated him that he no longer could function in his daily activities on behalf of the partnership. *Pet'r Feb. Ltr.* 1. While this argument may be suitable in forming a basis for establishing dissolution of a partnership, it is not sufficiently persuasive in establishing termination of Petitioner's contractual obligation with HUD regarding the subject debt.

Where a claim is contractual in nature, the plaintiff may be able to proceed on the theory that any individual defendant is directly obligated on the contract in his or her personal capacity, even if he or she is not liable as a partner. *See* N.C. Gen. Stat. § 59-66 (a); See, e.g., First DMV Inc. v. Amster, 545 So. 2d 936 (Fla. App. 1989) (although lease which identified individuals as partners was not effective to establish actual partnership, it did constitute enforceable agreement by each individual to pay share of the obligation). The partnership agreement in this case is

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[5] N.C. Gen. Stat. § 59-62 (Dissolution by Decree of Court):
(a) On application by or for a partner the court shall decree a dissolution whenever:
(1) A partner has been adjudicated incompetent or is shown to be of unsound mind,
(2) *A partner becomes in any other way incapable of performing his part of the partnership contract*,
(3) A partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business,
(4) A partner willfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him,
(5) The business of the partnership can only be carried on at a loss,
(6) Other circumstances render a dissolution equitable.
(b) On the application of the purchaser of a partner's interest under G.S. 59-57 and 59-58:
(1) After the termination of the specified term or particular undertaking,
(2) At any time if the partnership was a partnership at will when the interest was assigned or when the charging order was issued. (Emphasis added.)

contractual in nature so the execution of its terms and conditions is not determined based upon the existence or non-existence of a partnership. Petitioner and his co-partner entered into this contractual agreement with HUD and became jointly and severally liable for paying the subject debt. This Office has consistently maintained that co-signers of a loan are jointly and severally liable to the obligation, and as a result, "a creditor may sue the parties to such obligation separately or together." Mary Jane Lyons Hardy, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). "The Secretary may proceed against any co-signer for the full amount of the debt" because each co-signer is jointly and severally liable for the obligation. Hedieh Rezai, HUDBCA No. 04-A-NY-EE016 (May 10, 2004).

Here, the Secretary's right to collect the subject debt emanates from the terms of the Agreement. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). For Petitioner not to be held liable for the subject debt, he must submit evidence of either: (1) a written release from HUD showing that Petitioner is no longer liable for the debt; or, (2) evidence of valid or valuable consideration paid to HUD to release him from his obligation. Franklin Harper, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005) (citing Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (January 30, 2003)); William Holland, HUDBCA No. 00-A-NY-AA83 (October 12, 2000); Ann Zamir (Schultz), HUDBCA No. 99-A-NY-Y155 (October 4, 1999); Valerie L. Karpanai, HUDBCA No. 87-2518-H51 (January 27, 1988); Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986); and Jesus E. and Rita de los Santos, HUDBCA No. 86-1255-F262 (February 28, 1986). In the instant case, Petitioner has failed to produce either evidence of a written release from his legal obligation to pay the subject debt, or evidence of valuable consideration paid to HUD in satisfaction of the debt, thus rendering the subject debt unenforceable.

The Court therefore finds that, without proof of a written release from his partnership agreement with HUD, Petitioner remains legally obligated to pay the subject debt as the co-signer on the partnership agreement.[6]

II. Insufficient Notice

Next, Petitioner claims that the notices he received were "inadequate." More specifically, Petitioner states that, "on August 6, 2012, I received by regular mail a Demand [N]otice for $72,870.96 dated August 1, 2012. Then on August 10, 2012, I received by regular mail a Notice of Intent to Collect by Treasury Offset for $72,870.96 date[d] August 6, 2012. Neither of the notices had any explanation as to why I was notified or what it pertained to except to pay the full amount or suffer a Treasury Offset." *Pet'r Feb. Ltr.* 2.

As support, Petitioner provides copies of the Demand Notice and Offset Notice for the Court's review. Petitioner acknowledges receipt of both notices, on August 6, 2012 and August 10, 2012 respectively. Pursuant to 31 C.F.R. § 901.2(B), the content of notices issued in administrative offset proceedings shall include:

[6] As a recourse, Petitioner may wish to seek recovery, in the state or local court, for what he will pay in satisfaction of the debt owed to HUD. *See* Michael York, HUDBCA No. 09-H-CH-AWG36, dated June 26, 2009, at 3.

(1) The basis for the indebtedness and the rights, if any, the debtor may have to seek review within the agency;

(2) The applicable standards for imposing any interest, penalties, or administrative costs;

(3) The date by which payment should be made to avoid late charges (i.e. interest, penalties, and administrative costs) and enforced collection, which generally should not be more than 30 days from the date that the demand letter is mailed or hand-delivered; and,

(4) The name, address, and phone number of a contact person or office within the agency.

Both notices in this case met the criteria as set forth in 31 C.F.R. § 901.2(B). The *Demand Notice* from the Loan Servicing Specialist also informed Petitioner that the debt identified as delinquent was now eligible for collection by means of administrative offset under the Debt Collection Improvement Act of 1996. *Pet'r Feb. Ltr.* 10. The Demand Notice also informed Petitioner that if he needed further information about his debt "please contact me at 1-800-669-5152." Petitioner acknowledges that he contacted the Loan Servicing Specialist to seek additional information. Petitioner states, "On August 14, 2012, I called and spoke to Mr. Scott DuBois at the Financial Operations Center in Albany, NY. Mr. DuBois was most courteous and very helpful." *Pet'r. Feb. Ltr.* 2. Petitioner also was informed that if he needed additional information he could submit a written request to the Loan Servicing Specialist.

In the Offset Notice Petitioner likewise was informed of the debt he owed to HUD. The Offset Notice also identified the amount of the debt owed, the date of default, and a detailed explanation of why Petitioner was notified — that being that the debt he owed was delinquent. *Pet'r. Feb. Ltr.* 8-11.

After examining the language of the notices previously issued to Petitioner against the criteria set forth in 31 C.F.R. § 901.2(B), the Court concludes that the notices issued to Petitioner were legally sufficient. Therefore, the Court finds that Petitioner's claim of insufficiency of notice is without merit.

Insufficiency of Notice in Prior Civil Money Penalty Action

As a separate issue, Petitioner challenges the sufficiency of notice in his prior civil money penalty action. Petitioner states that the *Default Decision and Order* from the civil money penalty action:

> [S]tated in a letter dated October 2, 2005 that, HUD provided written notice that it was seeking civil money penalties against Respondents GRA William T. Blackman, Jr. and S. Alan Albright, as General Partners of GRA, for GRA's failure to properly file the required annual financial report due March 31, 2004 and March 31, 2005.

Pet'r. Feb. Ltr. 43.

Petitioner further states, "I see from the documents that all of these notices were sent to York Chester Center, 209 West Second Ave., Gastonia, NC 28052. As I have stated before, this is not my address, has never been my address and I have never received mail there. Neither is it the legal mailing address of Gardner Ridge Associates." Id.

Petitioner's assertion regarding insufficiency of notice in his civil money penalty action is not relevant to the outcome of the instant administrative offset proceeding. This proceeding is held in order to review the evidence of record and decide whether a debt is due and legally enforceable by means of administrative offset. It is not the forum within which to address issues related to the collection of civil money penalties pursuant to Section 536 of the National Housing Act, (12 U.S.C. § 1735f-15) and 24 C.F.R. Part 30.

It should be noted that the issue Petitioner has raised may be, at this stage, a moot point. It is apparent from the record that both parties concede that on November 30, 2006 a *Default Decision and Order* was issued in the civil money penalty case and as a result a final decision has already been rendered. See In the Matter of Gardner Ridge Associates, et. al., HUDALJ 07-001-CMP, dated November 30, 2006.

ORDER

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

ORDERED that the Secretary is authorized to seek collection of this outstanding debt by means of administrative offset of any federal payment due Petitioner.

Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. This *Decision and Order upon Reopen* shall be final unless a party timely appeals the determination in accordance with 24 C.F.R. § 26.26 (2012). Any party may request, in writing, Secretarial review of the determination within 30 days after the hearing officer issues the determination, in accordance with § 26.26 of this part.