

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

In the Matter of:

Sharon K. Ringgenberg,

Petitioner.

HUDOHA 13-VH-0102-AO-003
Claim No. 721000236

September 10, 2013

DECISION AND ORDER

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 (“HUD”) 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 March 28, 2013, 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 History

Pursuant to 24 C.F.R. § 17.81 (a), on April 1, 2013, this Court stayed the issuance of an administrative offset of any federal payment due Petitioner until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”), 2). On May 1, 2013, the Secretary filed his *Statement* along with documentation in support of his position. To date, Petitioner has not filed any documentary evidence in support of her position that the alleged debt has been paid off. This case is now ripe for review.

Background

According to the Secretary, Petitioner became delinquent in her mortgage payments of a loan insured against default by the Federal Housing Administration (“FHA”), which is a part of HUD. (*Secretary’s Statement* (“*Sec’y. Stat.*”) ¶ 2, filed May 1, 2013; Ex. A, *Declaration of Kathleen M. Porter* (“*Porter Decl.*”), ¶ 5.) As a means of providing foreclosure relief, HUD advanced funds to Petitioner’s lender to bring her mortgage current. (*Sec’y. Stat.*, ¶ 4.)

In exchange, Petitioner executed a Partial Claims Promissory Note (“*Note*”) dated October 30, 2002 with the Secretary. (*Sec’y. Stat.*, ¶ 3, Ex. B, *Note*.) By its terms, the *Note* was

payable on December 1, 2028, or upon the occurrence of certain events, to wit: “(i) Borrower has paid in full all amounts due under the primary Not [sic] 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 primary 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 his or her principal residence.” *Id.*, ¶ 3(A) (i)-(iv).

On or about November 12, 2004, the FHA insurance on Petitioner’s primary mortgage was terminated as the lender notified HUD that the primary mortgage was paid in full. (*Sec’y Stat.*, ¶ 4; *Porter Decl.*, ¶ 4.) Notwithstanding these events, the Note was not paid off upon payment in full of the primary mortgage or the termination of the FHA insurance. Accordingly, HUD issued a “Notice of Intent to Collect by Treasury Offset” to Petitioner on or about February 19, 2007. (*Sec’y Stat.*, ¶ 5, Ex. C; *Porter Decl.*, ¶ 6.)

On September 14, 2007, Petitioner filed for Chapter 13 bankruptcy protection with the United States Bankruptcy Court for the Northern District of California. Petitioner voluntarily dismissed her petition shortly thereafter, and an order of dismissal was entered on November 15, 2007. (*Sec’y Stat.*, ¶ 7; Ex. D1 and D2.) Accordingly, Petitioner’s Chapter 7 bankruptcy was dismissed on May 23, 2008 for failure to comply. (*Sec’y Stat.*, ¶ 7, Ex. E1; *Porter Decl.*, ¶ 7.)

On March 13, 2013, a notice of reduction of Social Security benefits payments issued from the Department of Treasury to Petitioner regarding HUD’s efforts to collect on Petitioner’s debt. (*Sec’y Stat.*, ¶ 7, Ex. F.) The March 13, 2013 notice advised Petitioner that HUD intended to offset Petitioner’s monthly Social Security benefit payments by up to 15% until the debt was paid in full, although benefit payments would not be reduced to less than \$750 per month. *Id.* Petitioner filed this request for hearing on or about March 28, 2013. (*Sec’y Stat.*, ¶ 8.)

The Secretary has attempted to collect on the Note, but Petitioner remains in default. As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$ 8,908.18 as the unpaid principal balance as of March 30, 2013;
- (b) \$ 1,276.67 as unpaid interest on the principal balance at 4% per annum through March 30, 2013;
- (c) \$ 1,467.00 as the unpaid penalties and administrative cost through March 30, 2013; and,
- (d) interest on said principal balance from April 1, 2013 at 4% per annum until paid.

(*Sec’y Stat.*, ¶ 9; Ex. A, *Porter Decl.*, ¶ 5.)

The March 26, 2007 letter from Chase Home Finance, LLC (“Chase”) provided by Petitioner states, “The aforementioned partial claim is a separate loan through HUD, and is not included in payoff figures that are provided as payment in full for Chase’s Loan.” (*Sec’y Stat.*, Ex. A, *Porter Decl.*, ¶ 8, and Ex. G.) According to the Secretary, Petitioner has provided no evidence that HUD’s Partial Claim Promissory Note in the amount of \$10,089.27 was paid. *Id.*

Therefore, the Secretary respectfully requests that the Court finds Petitioner's debt to be past due and legally enforceable.

Discussion

In this case Petitioner claims she does not owe the debt that is the subject of this proceeding because: 1) it was paid in full by her lender; and, 2) she filed bankruptcy. More specifically, Petitioner states that:

The sale of this house [the subject of the debt], went through an escrow company [by] which all liens were paid in full. My lender, Chase [,] who arranged bringing my payments current, told me they would add my payments on the back end of the loan. I have attached a copy of the letter that I wrote to Chase and I have included their response to me.

(Petitioner's Hearing Request, (H'rg. Req.), filed March 28, 2013.)

As support, Petitioner submitted a copy of the letter of inquiry that she sent to her lender's research department on February 20, 2007. In the letter, Petitioner requested the payoff status of the subject debt. Petitioner also introduced into evidence a copy of her lender's letter dated March 26, 2007 that she received in response to her inquiry regarding the payoff status of the alleged debt. Petitioner concluded that "This is a partial claim note which I believe should have been attached to Chase or a lien attached to the property. This was not a personal note[.] [I]t was an asset based note. I had also filed a bankruptcy during this time period." *(Hr'g. Req.)*

The Secretary claims, on the other hand, that the Petitioner's debt is past due and legally enforceable. While Petitioner relies on a letter and other documents from her lender as support that "the Note was either paid or should have been paid by her lender," the Secretary contends that "the letter from Petitioner's lender states clearly that the Note 'is a separate loan through HUD, and is not included in the payoff figures that are provided as payment in full for [the lender's] loan.' " *(Sec'y. Stat., Ex. G.)* The Secretary further states that "Petitioner is the sole borrower on the Note and, by executing the document, acknowledged that she accepted and agreed to the 'terms and covenant contained in [the] Note.' " *(Sec'y. Stat., Ex. B.)* "Those terms included payment in full of the Note upon the payoff of the primary note and mortgage[,] or termination of the FHA insurance." *(Sec'y. Stat., ¶ 13.)* As support, the Secretary produced a copy of the Note signed by Petitioner. *(Sec'y. Stat., Ex. B.)*

In addition, the Secretary claims that "Petitioner's filing of bankruptcy in 2007 is inapposite, as the cases were dismissed and Petitioner did not receive a discharge from the bankruptcy court." As support, the Secretary introduces into evidence copies of the Notice of Dismissal of Case for a Chapter 13 bankruptcy filing issued by the United States Bankruptcy Court, Northern District of California on November 16, 2007, and the Order of Dismissal for a Chapter 7 bankruptcy filing issued by the same court on May 23, 2008. *(Sec'y. Stat., Exs. D2 and E2.)*

Based upon a review of the record, it is evident that Petitioner entered into an agreement with HUD in which Petitioner agreed to pay the principal sum of the alleged debt upon payment in full of the primary Note and related mortgage in this case. (*Sec'y. Stat.*, Ex. B.) The Secretary's right to collect the alleged debt in this case emanates from the terms of the Note. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). Since those were the terms of the agreement, Petitioner is obligated to abide by those terms.

As noted in the letter from the lender submitted by Petitioner as evidence, the HUD loan is a separate loan from that of the lender's loan, so the loan payoff for the lender would not include the payoff amount for the HUD loan. (*Hr'g. Req.*, Attachment.) Petitioner's allegation that the subject debt was paid in full is meritless without evidence to otherwise support her position. This Court has consistently maintained that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or unenforceable." Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Petitioner was extended the opportunity to produce evidence to prove that the alleged debt was paid in full but she failed to do so. (*See Notice of Docketing; Ruling on Petitioner's Motion to Dismiss*, filed June 11, 2013.) As a result, Petitioner's claim fails for lack of proof.

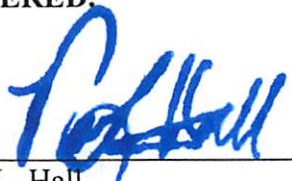
Finally, Petitioner's claim that the alleged debt is unenforceable because of her bankruptcy filing is likewise without merit. After reviewing the Chapter 13 Notice of Dismissal and the Chapter 7 Order of Dismissal introduced by the Secretary, it is clear from the record that Petitioner never received an Order of Discharge by Bankruptcy in this case. Therefore, because the debt was not discharged by bankruptcy, Petitioner remains legally obligated to pay the debt that is the subject of this proceeding.

ORDER

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

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

SO ORDERED.



Vanessa L. Hall
Administrative Judge

Review of determination by hearing officers. This *Decision and Order* 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.