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

In the Matter of: **CYDNIE A. TAYLOR,** Petitioner.	HUDOHA No. 14-AM-0063-AO-005 Claim No. 7-210076960A October 22, 2014

DECISION AND ORDER

On February 24, 2014, Cydnie A. Taylor ("Petitioner") was notified that, pursuant to 31 U.S.C. §§ 3716 and 3720A, the Secretary of the U.S. Department of Housing and Urban Development ("HUD," or "the Secretary") intended to seek administrative offset of any federal payments due to Petitioner in order to satisfy Petitioner's alleged debt to HUD.

On March 11, 2014, Petitioner requested a hearing concerning the existence, amount and enforceability of the alleged debt. The Office of Hearings and Appeals has been designated to determine whether the debt is legally enforceable. 24 C.F.R. § 17.69(c). As a result of the Petitioner's hearing request, referral of the debt to the U.S. Department of the Treasury for the administrative offset was temporarily stayed by the Court on March 12, 2014, until the issuance of this written decision by the Administrative Judge. (Notice of Docketing, Order, and Stay of Referral ("Notice of Docketing"), dated March 12, 2014).

Background

On September 13, 2012, Petitioner executed and delivered to the Secretary a Subordinate Note ("Note" or "Subordinate Note") in the amount of $65,773.22, in exchange for foreclosure relief. (Secretary's Statement ("Sec'y Stat.") ¶ 2, filed March 18, 2014; Ex. A, Note). The Note described four events that would make the debt immediately due and payable. (Sec'y Stat., ¶ 3; Ex. A, p. 2, ¶ 4.) One of these events was the payment in full of the primary note and related mortgage. (Sec'y Stat., ¶ 3, Ex. A, p. 2.) On or about February 27, 2013, the Secretary was informed that the primary note had been paid in full. (Sec'y Stat., ¶ 4; Ex. B, Declaration of Brian Dillon[1] ("Dillon Decl.")).

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

HUD states that it has attempted to collect on the Note from Petitioner, but without success. (Sec'y Stat., ¶7.) Consequently, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

a. $65,773.22 as the unpaid principal balance as of February 28, 2014;
b. $164.37 as the unpaid interest on the principal balance at 1% per annum through February 28, 2014; and
c. Any interest on said principal balance from March 1, 2014, at 1% per annum until paid.

(Sec'y Stat., ¶ 7; Dillon Decl., ¶ 4.)

On February 24, 2010, HUD sent Petitioner a Notice of Intent to Collect by Treasury Offset. (Sec'y Stat., ¶ 8; Dillon Decl., ¶ 5.)

Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A, provides federal agencies with the remedy of administrative offset of federal payments for the collection of debts owed to the United States government. Petitioner bears the initial burden of submitting evidence to prove that the debt is not past-due or legally enforceable. 24 C.F.R. § 17.69(b); Juan Velazquez, HUDBCA No. 02-C-CH-CC049 (Sept. 25, 2003).

Petitioner states that she believed her primary mortgage lender, Bank of America, was also servicing the Subordinate Note pursuant to 24 C.F.R. § 203.371. She contends that Bank of America was obligated to pay off the Subordinate Note when Petitioner refinanced her primary mortgage. As evidence, she filed a copy of the payoff statement presented by Bank of America, that did not include payment on Subordinate Note. (Petitioner's Hearing Request ("Pet'r's Hr'g Req"), filed March 11, 2014, Attachment #2.) Petitioner argues that "if the Subordinate Note has not been satisfied or HUD has not received a payment from Bank of America, HUD may have a claim against Bank of America, but any claim against Petitioner was satisfied." (Petitioner's Supplemental Statement ("Pet'r's Supp. Stat."), filed May 30, 2014.)

Petitioner has filed documentary evidence showing the payoff amount of the primary mortgage, and also submitted a copy of the Cancellation of Deed to Secure Debt, which shows that the debt on her primary mortgage was paid in full. (Pet'r's Hr'g Req.) She also states that she never received any information from Bank of America explaining the mechanics of her loan with HUD. (Pet'r's Supp. Stat., Ex. A, Petitioners Affidavit). Finally, Petitioner contends that the security deed is an invalid conveyance under Georgia law because it was "executed without the presence of a lawyer." Id. at ¶ 4.

The Secretary argues that Bank of America never acted as servicer on the Subordinate Note on HUD's behalf, and so was not required to pay off the Note and did not do so. The Court agees with the Secretary on this point. Petitioner's obligation to repay the debt derives from the terms of the Note. See Dimitris and Andrea Baldwin, HUDOA No. 12-AM-CH-AO-47 (April 8, 2013). Paragraph no. 1 of the Note identifies the "Lender" as "the Secretary of Housing and Urban Development and its successors and assigns," and states that Petitioner is to pay "to the order of Lender." (Sec'y Stat., Ex. A, p. 2 ¶ 2.) Paragraph no. 4 of the Note identifies the manner

of payment. Under that provision, the debt becomes due once all amounts under the primary note are paid in full. (Id. at ¶ 4(A)(i).) Payment was required to be made at HUD's office in Washington, D.C., "or any such other place as Lender may designate in writing by notice to Borrower." Id. at ¶ 4(B). The terms of the Note thus provide express instructions as to how, when, where, and to whom payment was required to be made. Id. Bank of America is not named in the Note as a lender, assignee, or loan servicer. Petitioner has acknowledged that she did not make payment to HUD, and she does not suggest that she ever received written instruction from HUD to make payment to Bank of America.

Petitioner also argues that the provisions of 24 C.F.R. § 203.371(c) somehow required Bank of America to have arranged for payoff of the Subordinate Note under the circumstances of this case. That argument is inapposite. Petitioner apparently relies upon the language of 24 C.F.R. §203.371(c) that states: "HUD may require the mortgagee to be responsible for servicing the subordinate mortgage on behalf of HUD." 24 C.F.R. § 203.371(c). The word "may" in the text confirms that this is a permissive regulation. HUD is therefore not required to have the mortgagee service the note on its behalf. Moreover, the Secretary states that HUD does not require any mortgagee to service their partial claims notes, and did not require Bank of America to do so here. (Sec'y Supp. Stat., ¶ 5; Dillon Decl., ¶ 3). Petitioner has offered no evidence to refute this argument. Neither has she provided evidence of any notice from HUD designating Bank of America as the servicer of the Subordinate Note in this case. Petitioner's apparent assumption that the payoff statement included her obligation to HUD is therefore without basis. Consequently, I find that Petitioner has not fulfilled her obligations under the Note, and the debt remains past due and owing.

Petitioner next contends that Bank of America was at fault because it failed to follow Georgia law when recording the deed. This argument is similarly unavailing. Petitioner states that the recording of the security deed was invalid because she "executed the deed without the presence of a lawyer" and was "not provided the opportunity to have the assistance of an attorney." ("Pet'r's Supp. Stat. ¶ 4"). As support, Petitioner cites to In re: UPL Advisory Opinion 2003.2, 588 S.E.2d 741 (2003), which found that it is the "unauthorized practice of law for someone other than a duly-licensed Georgia attorney to close a real estate transaction or to prepare or facilitate the execution of such deed(s) for the benefit of the seller, borrower, or lender."

This argument fails for multiple reasons. First, the Advisory Opinion does not state that the violation of an attorney discipline rule voids the underlying transaction. Petitioner has offered no evidence that a deed recorded by a non-attorney is automatically invalid. The proper outcome under such a scenario would be a disciplinary hearing for the offending individual. Second, Petitioner asserts that it is Bank of America's responsibility to ensure that Petitioner is represented by an attorney. Petitioner fails to explain why this burden would fall on Bank of America rather than on Petitioner, herself. The Advisory Opinion states only that someone acting for the benefit of a party must be an attorney. There is no evidence in the record to suggest that a non-attorney acted for the benefit of Bank of America. There is thus no evidence that Bank of America erred in any way. Finally, as the Advisory Opinion notes, "non-lawyers may conduct *pro se* those transactions set out in OCGA § 15-19-50 and to which they are a party. UPL Advisory Opinion, 588 S.E.2d at 742, n. 2. Section 15-90-50 defines "the practice

of law," and includes "the preparation of legal instruments of all kinds whereby a legal right is secured." Ga. Code Ann. § 15-19-50(3). Petitioner, being a party to the closing of her own deed, was not required to proceed with an attorney. And it does not follow that the absence of an attorney to represent Petitioner automatically invalidates the deed.

Finally, since Bank of America was not a signatory to the Subordinate Note and did not service the Note, it did not incur any obligation with respect to the Note. The only party responsible for payment of the Subordinate Note is Petitioner herself, as she is the person who signed the Note. She has acknowledged that she did not repay HUD as required in the Note.

The evidence shows that the debt owed on the Note was never paid to Bank of America. The payoff statement reflects only the primary mortgage, as does the Cancellation of Deed to Secure Debt. Petitioner has thus proven only that the primary mortgage was paid in full. I, therefore, find that Petitioner is indebted to HUD in the amounts claimed by the Secretary.

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. It is

ORDERED that the *Order* imposing the Stay of Referral of this matter to the U.S. Department of the Treasury for administrative offset is **VACATED**. It is

FURTHER ORDERED that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative offset of any federal payment due Petitioner.

SO ORDERED.

H. Alexander Manuel
Administrative Judge