

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

In the Matter of:

**Marcia Gibson,**

Petitioner.

HUDOHA 15-VH-0023-AO-008

Claim No. 7-807678250A

June 22, 2016

**DECISION AND ORDER**

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on December 11, 2014, by Petitioner Marcia Gibson ("Petitioner"), 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").

Pursuant to 24 C.F.R. § 17.81(a), on December 11, 2014, the 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) at 2. The Court granted Petitioner's *Motion for Leave to File* on April 17, 2015. Petitioner filed a *Statement*, along with supporting documentation, on May 18, 2015. *Petitioner's Statement (Pet'r. Statement)* at 1. On January 7, 2016, the Secretary filed a *Secretary's Statement*, along with documentary evidence, in support of his position. This case is now ripe for review.

**Jurisdiction**

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 *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.

**Background**

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720A, as a result of a defaulted loan that was insured against non-payment by 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.

On March 21, 2002, Petitioner executed and delivered to Country Squire Powell d/b/a CMH Homes, Inc. a Retail Installment Contract – Security Agreement ("Note") in the amount of \$22,690.95, secured by a HUD-insured mortgage. *Sec'y. Stat.* ¶ 2. Country Squire Powell d/b/a CMH Homes, Inc. assigned the Note to Vanderbilt Mortgage and Finance, Inc. *Sec'y. Stat.* ¶ 3.

After Petitioner failed to make the agreed payment and defaulted on the Note, Vanderbilt Mortgage and Finance, Inc. assigned the Note to the Secretary. *Sec'y. Stat.* ¶ 4; *Ex. B, Declaration of Gary Sautter*<sup>1</sup> (“*Sautter Decl.*”) ¶ 3.

Petitioner filed for Chapter 13 bankruptcy on July 31, 2007. *Sec'y. Stat.* ¶ 8. On April 17, 2009, she converted the case to a Chapter 7 proceeding. *Id.* The bankruptcy case was dismissed on May 29, 2009. *Id.* On November 17, 2014, a Notice of Intent to Collect by Treasury Offset Program was sent to Petitioner. *Sec'y. Stat.* ¶ 6; *Sautter Decl.* ¶ 5. The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- (a) \$11,640.26 as the unpaid principal balance as of December 30, 2015;
- (b) \$19.30 as the unpaid interest on the principal balance at 1% per annum through December 31, 2015;
- (c) \$617.79 as the unpaid penalties and administrative costs as of December 30, 2015; and
- (d) interest on said principal balance from December 31, 2015 at 1% per annum until paid.

*Sec'y. Stat.* ¶ 5; *Sautter Decl.* ¶ 4.

### Discussion

Petitioner disputes the existence of the debt and claims that the subject debt is unenforceable because it was discharged via bankruptcy. *Pet'r. Statement* at 1, 2. Specifically, Petitioner claims, “I had a Chapter 7 in 2005 [...] I was not eligible for a Chapter 7 in 2009[.] When the attorney tried to convert the Chapter 13 as you see it [was] dismissed leaving me owing all my debts[,] one of which was Vanderbilt Mortgage and Finance.”

Petitioner introduces as evidence a copy of a Discharge of Debtor Order granted by the United States Bankruptcy Court, Eastern District of Tennessee, on August 18, 2005. *Petitioner's Documentary Evidence* (“*Pet'r Doc. Evid.*”) filed May 18, 2016. However, Petitioner also produced a copy of a Dismissal Order from the same court that indicated Petitioner filed for a Chapter 13 bankruptcy in the Eastern District of Tennessee on July 31, 2007 that was converted to a Chapter 7 on April 17, 2009, and later dismissed on May 29, 2009. *Id.* Petitioner notes that the conversion from a Chapter 13 bankruptcy to a Chapter 7 bankruptcy, later dismissed, was on advice of counsel. Her attorney advised Petitioner that extending her time in bankruptcy and reducing her garnishment amount “could be done but converting to a Chapter 7 would be in my best interest.” *Id.* Petitioner contends that revival of the debt that is the subject of this proceeding is unenforceable because she should not be held responsible for a debt that was revived after discharge by bankruptcy based on the advice she received from her attorney.

In response, the Secretary contends that “Petitioner’s indebtedness was not discharged as a result of the bankruptcy proceedings that she filed.” *Sec'y. Stat.* ¶ 9. “A review of Petitioner’s

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<sup>1</sup> Gary Sautter is the Acting Director of the Asset Recovery Division of HUD’s Financial Operations Center.

bankruptcy records,” according to the Secretary, “shows that Petitioner filed a Chapter 13 bankruptcy action under case number 07-32467 in the Eastern District of Tennessee (Knoxville) on July 31, 2007.” *Sec’y. Stat.*, ¶ 8. The bankruptcy records further show that “Petitioner subsequently converted the case to a Chapter 7 proceeding on April 17, 2009, however, the case was dismissed on May 29, 2009.” *Id.* As support for his position, the Secretary introduced into evidence a copy of an affidavit from the Acting Director of HUD’s Asset Recovery Division in which it was further substantiated that the Chapter 7 bankruptcy filed by Petitioner was in fact dismissed on May 29, 2009. *Sec’y. Stat.*, Ex. C, *Sautter Decl.*, ¶ 6. In addition, the Secretary produced a copy of the Note Petitioner signed as evidence of Petitioner’s agreement to pay the subject debt. *Sec’y. Stat.*, Ex. A.

Upon reviewing the record, it is clear that both parties agree that a Chapter 7 bankruptcy was filed and later dismissed. Both parties produced sufficient evidence in support of this fact. *Sec’y. Stat.*, Ex. C, *Sautter Decl.*, ¶ 6; *Pet’r Doc. Evid.* However, Petitioner’s position that the subject debt is unenforceable against her because she was ill-advised by her attorney to convert her Chapter 13 bankruptcy action to a Chapter 7 bankruptcy action lacks merit. It is not within the discretion of this Court to determine whether Petitioner was released from her legal obligation to pay the subject debt simply because she was not properly advised by her attorney. Such determination is beyond the scope of this Court’s jurisdiction.

What is within the jurisdiction of this Court is to determine the existence, amount, or enforceability of a debt allegedly owed to HUD. *See* 24 C.F.R. §§ 17.69 and 17.73. While Petitioner may have considered the subject debt to be discharged as a result of a Chapter 7 bankruptcy action, the record is sorely lacking sufficient evidence to substantiate that such position has merit. A Chapter 7 bankruptcy action that was later dismissed could not, and would not, effectively discharge Petitioner from her legal obligation to pay the debt that is the subject of this proceeding. *See* 11 U.S.C. (Bankruptcy) § 349(b)(1).

In order to establish, by a preponderance of the evidence, that a debt is no longer enforceable by operation of law, herein bankruptcy, Petitioner would need to produce a copy of the order of discharge by bankruptcy along with a schedule of creditors that included the subject debt as a debt listed to be discharged. In this case, there is a record of an Order of Discharge issued in 2005 by a federal bankruptcy court, but, that Order was later converted from a Chapter 13 bankruptcy action to a Chapter 7 bankruptcy action, and then dismissed. Even if the Order of Discharge had not been dismissed, the record again lacked a Schedule of Creditors that included the subject debt as a discharged debt. Therefore, the Court finds that Petitioner’s claim lacks merit and fails for lack of proof.

Petitioner next argues that the attorney who improperly advised her should be responsible for the subject debt since it was his fault that she incurred the debt. Petitioner states “Had the attorney offered other options, I would not be in this mess. I should not be held responsible for his stupidity as you see I have filed complaints against him. If anyone is responsible for this debt it should be the attorney.” As support Petitioner submitted a copy of a Memorandum of

Complaint filed with the Board of Professional Responsibility of the Supreme Court of Tennessee. *Pet'r Doc. Evid.* Petitioner further states:

Vanderbilt filed an insurance claim with HUD which HUD paid[.] [N]ow HUD is garnishing my wages and may have filed a tax offset against me. The attorney knowing I had the Chapter 7 2005 knew it had not been enough time to allow me another Chapter 7. Why did he not offer other options....The attorney's solution was for me to come in and refile a Chapter 7 at the cost of \$1050 up front...I would like to see this problem solved without further cost to me. I need this wage garnishment lifted and no tax offsets. I am open to solutions within reason.

*Pet'r. Statement* at 1.

Again, the Court reinforces that it is not within its discretion to make a determination whether Petitioner was released from her legal obligation to pay the subject debt simply because she was not properly advised by her attorney. Such determination is beyond the scope of this Court's jurisdiction.

### **ORDER**

Based on the foregoing, Petitioner remains legally obligated to pay the alleged debt in the amount so claimed by the Secretary.

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 obligation by means of administrative offset in the amount so claimed by the Secretary.

**SO ORDERED.**



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Vanessa L. Hall  
Administrative Judge

**Review of determination by hearing officers.** A motion for reconsideration of this Court's written decision specifically stating the grounds relied upon, may be filed with the undersigned Judge of this Court within 30 days of the date of the written decision, and shall be granted upon a showing of good cause.