

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

In the Matter of:

**BRYAN MCCLEES,**

Petitioner

HUDOA No.: 17-AM-0037-AO-010

Claim No.: 7210091680A

February 14, 2018

**DECISION AND ORDER**

On December 19, 2016, Bryan McClees (“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 Petitioner in order to satisfy a debt Petitioner allegedly owes to HUD.

On January 5, 2017, Petitioner filed a request for a hearing concerning the existence, amount or enforceability of the alleged debt. The Office of Hearings and Appeals has jurisdiction to determine whether Petitioner’s debt is legally enforceable. 24 C.F.R. § 17.69(c). As a result of 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 January 5, 2017, until the issuance of this *Decision and Order*. (Notice of Docketing, Order, and Stay of Referral (“Notice of Docketing”), dated January 5, 2017).

**Background**

On February 3, 2015, Petitioner executed and delivered to the Secretary a *Subordinate Note* (“Note” or “Subordinate Note”) in the amount of \$9,295.88, in exchange for HUD advancing funds to Petitioner’s FHA insured mortgage lender. (Secretary’s Statement (“Sec’y Stat.”) ¶ 2, filed February 1, 2017; Ex. 2, Note.) The Note described four events that would make the debt immediately due and payable. (Sec’y Stat., ¶ 4; Ex. 2, p. 1, ¶ 4.) One of these events was the payment in full of the primary note and related mortgage. (Sec’y Stat., ¶ 4, Ex. 2, p. 1.) On or about December 14, 2015, the insurance on the first mortgage was terminated, as the mortgage was paid in full. (Sec’y Stat., ¶ 5; Ex. 1, Declaration of Gary Sautter<sup>1</sup> (“Sautter Decl.”)).

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

HUD states that it has attempted to collect on the Note from the Petitioner, but without success. (Sec'y Stat., ¶ 6.) Consequently, the Secretary Alleges that Petitioner is indebted to HUD in the following amounts:

- a. \$9,295.88 as the unpaid principal balance as of December 31, 2016;
- b. \$15.48 as the unpaid interest on the principal balance at 1% per annum through December 31, 2016; and
- c. Interest on said principal balance from January 1, 2017, at 1% per annum until paid.

(Sec'y Stat., ¶ 7; Sautter Decl., ¶ 5.)

HUD sent a Notice of Intent to Collect by Treasury Offset dated December 19, 2016, to Petitioner. (Sec'y Stat., ¶ 8; Sautter Decl., ¶ 6.)

### 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 burden of submitting evidence to prove that the debt is not past-due or legally enforceable. 24 C.F.R. § 17.69(b); Cydney Taylor, HUDOHA No. 14-AM-0063-OA-005 (Oct. 22, 2014), citing Juan Velazquez, HUDBCA No. 02-C-CH-CC049 (Sept. 25, 2003).

In *Petitioner's Hearing Request*, filed January 5, 2017, Petitioner claims that he believes that the debt is not past-due or legally enforceable. However, Petitioner did not produce any documentary evidence towards that assertion. Instead, in a *Letter from Petitioner* dated April 14, 2017, Petitioner states that he previously believed the loan from HUD was incorporated within the principal balance of the original mortgage, which was paid off when Petitioner sold his home in 2015. ("Pet. April 14 Ltr.") At that time, Petitioner "did not realize that the modified amount was indeed treated as a separate 'mortgage' owed directly to HUD." (Pet. April 14 Ltr., ¶ 2).

Acknowledging the existence of the debt, Petitioner then pleads to the Court that he "not be found responsible for the missed payment to HUD in this case." (Pet. April 14 Ltr., ¶ 5). Petitioner asserts that he was under a mistaken belief as to the debt towards HUD. To further this claim, Petitioner provided an American Land Title Association Settlement Statement ("ALTA Settlement Statement"). (Petitioner's Documentary Evidence ("Pet'r's Doc. Evid.", filed April 14, 2017, unmarked exhibit)). The ALTA Settlement Statement records charges and fees for the sale of the underlying property in question and does not contain any payment towards HUD or its debt. Thus, neither Petitioner, real estate agent, nor the title company realized the existence of the HUD encumbrance on the property. Petitioner, therefore, argues that he should be relieved of his liability for missed payments in consideration of the collective error.<sup>2</sup>

However, a third party's error does not relieve Petitioner of liability for the debt. The Note signed by Petitioner on February 3, 2015 states:

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<sup>2</sup> Petitioner did not offer a legal theory explaining why an error on his part would render the collection of a debt unenforceable.

## 2. BORROWER'S PROMISE TO PAY

In return for a loan received from lender, Borrower promises to pay the principal sum of NINE THOUSAND TWO HUNDRED NINETY FIVE AND 88/100 Dollars (U.S. \$ 9,295.88), to the order of lender.

(Sec'y Stat., Ex. 2, p. 1, ¶ 2.)

Petitioner signed the note voluntarily and is obliged to comply with its terms. Petitioner has failed to cite any legal authority or language in the note that requires the Secretary to forgo collection of this debt from Petitioner. Petitioner's ignorance of the outstanding principal does not relieve Petitioner of his obligation to pay the principal due on the loan as well as all the interest which has accrued. Edgar Joyner, Sr., HUDBCA No. 04-A-CH-EE052 (June 15, 2005). Petitioner has acknowledged that he has not paid HUD as required in the Note.

Petitioner's ALTA Settlement Statement does not evidence the legal unenforceability of the Note. In light of the remaining documentary evidence, Petitioner has not met his burden to prove that the debt is not past-due or legally unenforceable. This Court, therefore, finds 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.**



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H. Alexander Manuel  
Administrative Judge