

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

In the Matter of:

Eric Racher,

Petitioner.

17-VH-0021-AO-003

7210089410A

October 25, 2017

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on December 19, 2016, by Petitioner Eric Racher (“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 19, 2016, the Court stayed the issuance of an administrative offset of any federal payment due to Petitioner until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral* (Notice of Docketing) at 2. On February 27, 2017, the Secretary filed a *Secretary’s Statement*, along with documentary evidence, in support of her 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 or about September 20, 2010, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note ("Note") in the amount of \$10,332.59. *Sec'y. Stat.* ¶ 2, Ex. 1, *Declaration of Brian Dillon* ("Dillon Decl."), ¶ 4. As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA insured mortgage lender, which was the holder of Petitioner's primary mortgage note ("primary note"). *Sec'y. Stat.* ¶ 3. The Note cites specific events that make the debt become due and payable. One such event is the payment in full amount of the primary note and related mortgage. *Sec'y. Stat.* ¶ 4.

On or about July 31, 2015, the FHA mortgage insurance on the primary mortgage was terminated, as the lender indicated the primary note and mortgage had been paid in full. *Sec'y. Stat.* ¶ 5. As a result, HUD attempted to collect the amounts due under the Note, but Petitioner remained delinquent and allegedly indebted to HUD. *Sec'y. Stat.* ¶ 6.

On January 25, 2017, Petitioner submitted documentary evidence in support of his position. Petitioner claimed that he did not owe the debt because his previous mortgagee, Wells Fargo Home Mortgage had repaid HUD at the closing of his mortgage refinance. On February 27, 2017, the Secretary provided its statement and asserted that Wells Fargo Home Mortgage did not repay HUD, and Petitioner's debt was past due and legally enforceable.

HUD's attempts to collect this alleged debt from Petitioner have been unsuccessful. *Sec'y. Stat.* ¶ 6. The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- a) \$10,332.59 as the total unpaid principal balance as of January 31, 2017;
- b) \$34.44 as the unpaid interest on the principal balance at 1% per annum through January 31, 2017;
- c) \$657.35 as the unpaid penalties and administrative costs on the balance through February 1, 2017; and
- d) interest on said principal balance from February 1, 2017 at 1% per annum until paid.

Sec'y. Stat. ¶ 7; *Dillon Decl.*, ¶ 5.

On November 28, 2016, a *Notice of Intent to Collect by Treasury Offset* ("Notice") was mailed to Petitioner. *Sec'y. Stat.*, ¶ 8; *Dillon Decl.*, ¶ 6.

DISCUSSION

Petitioner claims that he does not owe the debt because it was allegedly paid off by his mortgagee, Wells Fargo Home Mortgage, at the closing of his mortgage refinance. Specifically, Petitioner claims, that he does not believe he owes the debt because his previous mortgagee, Wells Fargo Home Mortgage, repaid HUD at the closing of his mortgage refinance. *Petitioner's Hearing Request (Hrg. Req.)*, filed December 19, 2016. In support of his argument, Petitioner provided a letter from Wells Fargo, dated November 16, 2016, indicating that HUD's Note had been repaid by Wells Fargo on November 16, 2010. In addition, Petitioner provided a HUD-1

Settlement Statement from his refinance transaction reflecting a payment to Wells Fargo in the amount of \$88,624.

For Petitioner not to be held liable for the full amount of the debt, there must be either a release in writing from the former lender explicitly relieving Petitioner's obligation, "or valuable consideration accepted by the lender" indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986).

In this case, Petitioner attempts to prove that the debt is not past due by submitting a letter from Wells Fargo stating that the Note had been repaid. However, the letter from Wells Fargo fails for two reasons.

First, Wells Fargo's statements were made in error. The Secretary points to a follow-up letter sent by Wells Fargo to Petitioner on January 23, 2017. The follow-up letter informed Petitioner that during the refinancing, the requested payoff only covered what was owed to Wells Fargo, and did not cover what was owed to HUD. This second letter, therefore, supersedes and corrects the previous representation made to Petitioner that the payoff to Wells Fargo included the amount required to satisfy Petitioner's obligation to HUD in this case.

Second, as noted *supra*, to prove that a debt has been paid, Petitioner must produce either a release in writing from the lender explicitly relieving Petitioner's obligation, "or valuable consideration accepted by the lender" indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). Assuming, *arguendo*, that the first letter from Wells Fargo was accurate, it would still be insufficient because it was issued by Wells Fargo and not HUD, which was the lender on the Note. Similarly, the HUD-1 Settlement Statement is insufficient because it does not demonstrate proof of a substantial payment made to HUD with the intent to satisfy the debt in this case, because it did not reflect any payment of the outstanding HUD Note.

As a result, the Court finds that Petitioner has failed to produce evidence of a written release from his obligation to pay the alleged debt, or evidence of valuable consideration paid to HUD in satisfaction of the debt, sufficient to render the alleged debt as being satisfied. Accordingly, petitioner remains contractually obligated to repay the subject debt in accordance with the terms of the Note, and as such, the Secretary may proceed against Petitioner for the full amount of the debt.

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

A handwritten signature in blue ink, appearing to read 'V. Hall', is written over a horizontal line.

Vanessa L. Hall
Administrative Judge