

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

In the Matter of:

Melissa Register,

Petitioner.

17-VH-0039-AO-011

7210092180A

December 4, 2017

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on January 10, 2017, by Petitioner Melissa Register (“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 January 11, 2017, 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 August 11, 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 December 26, 2013, the HUD-Insured loan on Petitioner’s home was in default, and Petitioner was threatened with foreclosure. *Sec’y. Stat. ¶ 2, Ex. 1, Declaration of*

Brian Dillon (“*Dillon Decl.*”), ¶ 4. In order to prevent the lender from foreclosing, HUD advanced funds to Petitioner’s lender, Wells Fargo, to bring the Primary Mortgage Note (“Primary Note”) current. *Sec’y. Stat.* ¶ 3. In exchange for foreclosure relief, on May 5, 2014, Petitioner executed a Partial Claims Promissory Note (“Note”) in the amount of \$24,108.06 in favor of the Secretary. *Sec’y. Stat.* ¶ 4. 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.* ¶ 5.

On or about August 12, 2015, the Petitioner’s first mortgage was paid in full and the FHA mortgage insurance was terminated. As a result, HUD attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec’y. Stat.* ¶ 9. A Notice of Intent to Collect by Treasury Offset was mailed to Petitioner at 10 Third Avenue, Hazlehurst, GA 31539-6761 on December 19, 2016. *Sec’y. Stat.* ¶ 10.

The Secretary therefore asserts that Petitioner is indebted to HUD in the following amounts:

- a) \$24,108.06 as the unpaid principal balance as of July 31, 2017;
- b) \$180.72 as the unpaid interest on the principal balance at 1% per annum through July 31, 2017;
- c) \$1,486.63 as the unpaid penalties and administrative costs on the balance through July 31, 2017; and
- d) interest on said principal balance from August 1, 2017 at 1% per annum until paid.

Sec’y. Stat. ¶ 9; *Dillon Decl.*, ¶ 5.

DISCUSSION

Petitioner claims that she does not owe the debt because she believes that there was no second mortgage on her home, and that she paid off all funds due on her home when it was sold in August 2015. According to Petitioner, the HUD-1 Settlement Statement demonstrates that there was no second mortgage on her home. Therefore, all funds due on her home were paid off when she paid \$172,171.51 to her primary lender, Wells Fargo. In support of her argument, Petitioner only provided the HUD-1 Settlement Statement along with her Hearing Request. *Petitioner’s Hearing Request (Hrg. Req.)*, filed January 10, 2017.

The Secretary contends that Petitioner has not provided any evidence that controverts the existence, amount, and validity of the debt. The Secretary also contends that the HUD-1 Settlement Statement shows that the only debt Petitioner paid at the closing on August 7, 2015, was her indebtedness to her primary lender, Wells Fargo. The Settlement Statement shows that no funds were set aside to pay off the Partial Claims Note, which Petitioner executed in favor of HUD.

For Petitioner not to be held liable for the full amount of the debt, there must either be 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, HUDCA No. 87-1917-G250 (Dec. 22, 1986). It is also well established that “assertions without

evidence are insufficient to show that the debt claimed by the Secretary is not past due and legally enforceable." Sara Hedden, HUDOA No. 09-H-NY-AWG95 (July 8, 2009), quoting Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996).

In this case, Petitioner has failed to produce any evidence of a written release from HUD that discharges Petitioner for the debt associated with the Subordinate Note. She has also failed to produce evidence of valuable consideration paid to HUD in satisfaction of the alleged debt that would render the alleged debt unenforceable.

Petitioner submitted the HUD-1 Settlement Statement along with her Hearing Request, which she claims is evidence that the \$172,171.51 she paid to Wells Fargo also paid off HUD because the Settlement Statement does not show a second mortgage. However, the HUD-1 Settlement Statement shows that the only debt Petitioner paid was the debt she owed to her primary lender, Wells Fargo. There is nothing in the Settlement Statement that indicates that funds were set aside to pay off the Partial Claims Note owed to HUD.

As a result, the Court finds that Petitioner has failed to produce evidence of a written release from her 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, the Court must find that Petitioner remains contractually obligated to pay the alleged debt as so claimed by the Secretary.

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



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 20 days of the date of the written decision, and shall be granted only upon a showing of good cause.