

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

In the Matter of:

Alisia Kelley aka Polzin,

Petitioner.

17-VH-0073-AO-025

7-210096300B

January 11, 2018

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on March 13, 2017, by Petitioner Alisia Kelley a.k.a. Alisia Polzin (“Petitioner”)¹ 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”).

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.

PROCEDURAL HISTORY

Pursuant to 24 C.F.R. § 17.81(a), on March 13, 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 April 18, 2017, Petitioner filed her Statement along with documentary evidence in support of her claim. On August 15, 2017, the Secretary filed a *Secretary’s Statement*, along with documentary evidence, in support of his position. This case is now ripe for review.

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

¹ To ensure that the record is accurate, note that the above caption now reflects the correct spelling of Petitioner’s first name from Alicia to Alisia.

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 12, 2011, John H. Polzin, Jr. and Alisia K. Polzin a.k.a. Alisia K. Kelley executed and delivered to the Secretary a Subordinate Note (“Note”) in the amount of \$38,751.00. *Sec’y. Stat.* ¶ 2, Ex. 1, *Declaration of Gary Sautter (“Sautter Decl.”)*, ¶ 4. The Note secured a Subordinate Mortgage held by the Secretary. *Sec’y. Stat.* ¶ 2. As a means of providing foreclosure relief, HUD advanced funds to Petitioner’s FHA insured mortgage lender. *Sec’y. Stat.* ¶ 3. In exchange for these funds, Petitioner executed the Note in favor of the Secretary. *Id.* 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 May 25, 2016, the FHA mortgage insurance on Petitioner’s primary mortgage was terminated as the lender indicated the primary note and mortgage was paid in full. As a result, HUD attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec’y. Stat.* ¶ 6. A Notice of Intent to Collect by Treasury Offset was mailed to Petitioner on or about February 20, 2017. *Sec’y. Stat.* ¶ 8.

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

- a) \$38,751.00 as the total unpaid principal balance as of May 30, 2017;
- b) \$161.40 as the unpaid interest on the principal balance at 1% per annum through May 30, 2017;
- c) \$ 2,368.14 as the unpaid penalties and administrative costs as of May 30, 2017; and
- d) interest on said principal balance from May 31, 2017 at 1% per annum until paid.

Sec’y. Stat. ¶ 7; *Sautter Decl.*, ¶ 5.

DISCUSSION

Petitioner claims that she does not owe the debt because it was allegedly paid off when her home was sold. Petitioner further claims that “my realtor was also informed by the title company that they sent a check to Midfirst to pay off the original loan amount as well as the \$38,751.00 owed for the loan modification.” Petitioner’s *Request for Hearing* (Petitioner’s *Hearing Request*), filed March 13, 2017. In support of her argument, Petitioner introduced into evidence copies of the First American Title Insurance Commitment Schedule; a letter from Midland Mortgage to Petitioner regarding the subject debt, and the Petitioner’s divorce decree.

After reviewing Petitioner’s documentary evidence, her record of evidence remains insufficient as proof of her claim that the debt is unenforceable. 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). Petitioner has failed to submit any documentary evidence that demonstrates that the subject debt was paid off. She has failed to produce evidence of a written release from HUD that discharges Petitioner for the debt associated with the Subordinate Note, or proof of any valuable consideration paid to HUD in satisfaction of the subject debt that would render the subject debt unenforceable.

The Secretary's right to collect the alleged debt in this case emanates from the terms of the Note, not from the terms of the divorce decree. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). This Office has previously held that co-signers of a loan are jointly and severally liable to the obligation, and as a result, "a creditor may sue the parties to such obligation separately or together." Mary Jane Lyons Hardy, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). As such, "the Secretary may proceed against any co-signer for the full amount of the debt" because each co-signer is jointly and severally liable for the obligation. Hedieh Rezai, HUDBCA No. 04-A-NY-EE016 (May 10, 2004).

In addition, neither the title company's commitment schedule nor the letter from Midland Mortgage to Petitioner provides sufficient evidence of a written release from HUD that effectively discharges Petitioner for the debt associated with the Subordinate Note. In fact, upon further reviewing the letter received by Petitioner from Midland Mortgage, it specifically states:

We want to remind you that if you pay off your loan with Midland Mortgage, a Division of MidFirst Bank, the total amount of the partial Claim(s) will be considered due and payable to HUD. Therefore, if you send Midland the payoff funds indicated on the loan payoff statement, *you will also need to send HUD the payoff amount of your Partial Claim(s) immediately following the payoff of your loan serviced by Midland.* (Emphasis added) Petitioner's *Hearing Request*, Attachment.

So, the instructions provided directly to Petitioner, in writing, were unambiguous regarding where to send the payoff for the subject debt amount to ensure that this debt was paid in full. Such steps obviously were not exercised by Petitioner in this case.

Because Petitioner has failed to produce either evidence of a written release from her obligation to pay the subject debt, or of valuable consideration paid to HUD in satisfaction of the debt, the Court finds that Petitioner has failed to meet her burden of proof. It is 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). Therefore, the Court must find, consistent with case law precedent, that Petitioner remains contractually obligated to pay the debt 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 30 days of the date of the written decision, and shall be granted only upon a showing of good cause.