

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

In the Matter of:

**Carol Gilbert-Whitman,**

Petitioner.

17-VH-0078-AO-027

7-210098780A

April 23, 2018

**DECISION AND ORDER**

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on March 27, 2017, by Petitioner Carol Gilbert-Whitman (“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”).

**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 28, 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 June 1, 2017 and June 20, 2017, Petitioner filed her *Statement* and additional documentary evidence in support of her position. On June 23, 2017, the Secretary filed a *Secretary’s Statement (Sec’y. Stat.)* 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, because 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, 2014, Carol Gilbert-Whitman ("Petitioner") and Douglas Whitman executed and delivered to the Secretary a Subordinate Note ("Note"), dated September 11, 2014, in the amount of \$24,489.90. The Note secured a Subordinate Mortgage held by the Secretary. *Sec'y. Stat.* ¶ 2, Ex. 1, *Declaration of Brian Dillon*<sup>1</sup> ("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"). In exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec'y. Stat.* ¶ 3; *Dillon Decl.*, ¶ 4.

By terms of the Note, the amount to be repaid thereunder becomes due and payable "when the first of the following events occurs: 4(A)(i) borrower has paid in full all amounts due under the primary note and related mortgage; or (ii) the maturity date of the primary note has been accelerated; or (iii) the [primary] note and related mortgage, deed of trust or similar security instrument are no longer insured by the Secretary; or (iv) the property is not occupied by the purchaser as his or her principal residence." *Sec'y. Stat.* ¶ 4, Ex. 2, at ¶ 4; Ex. 1, *Dillon Decl.*, ¶ 4.

On or about March 21, 2016 the FHA mortgage insurance on the primary mortgage was terminated, as the lender indicated the primary note and mortgage was paid in full. Exhibit 1, 1 4. Consequently, HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent and indebted to HUD. *Sec'y. Stat.*, ¶ 4, Ex. 1, *Dillon Decl.*, ¶ 4.

Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$24,486.90 as the total unpaid principal balance as of May 31, 2017;
- b. \$81.60 as the unpaid interest on the principal balance at 1% per annum through May 31, 2017;
- c. \$1,509.44 as the unpaid penalties and administrative costs as of May 31, 2017; and
- d. interest on said principal balance from June 1, 2017 at 1% per annum until paid.

*Sec'y. Stat.*, ¶ 7; Ex. 1, *Dillon Decl.*, ¶ 5.

A Notice of Intent to Collect by Treasury Offset was mailed to Petitioner on March 6, 2017. *Sec'y. Stat.*, ¶ 8, Ex. 1, *Dillon Decl.*, ¶ 4.

### **DISCUSSION**

Petitioner claims that she does not owe the debt because it was allegedly paid off when her home was sold. Petitioner first claims that the amount so claimed by the Secretary "was a 203K

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<sup>1</sup> Brian Dillon is Director of Asset Recovery Division for the U.S. Housing and Urban Development.

loan that was included in the original home loan for fixing repairs for the house that we bought. This amount was paid to NationStar upon the sale of the house,” and that she “did not understand why the amount of \$24,507.30 was reported to you by NationStar.” *Petitioner’s Request for Hearing (Hearing Request)*, filed March 27, 2017. Petitioner further claims,

I honestly had no idea that this money was supposed to go to your department for payment. I called NationStar twice and asked them if this money was mine. I called on or about September 8, 2016 and I called again February 24, 2017 and asked if the check was mine. Each time I was told ‘Yes, this money is yours’. I was told that the escrow had settled and this money is mine. I didn't hear, 'no this money was sent to you, but now you need to send this money to this place' or 'this is the number to call and get the information as we do not have this on file.... There was no proper disclosure at all about where this money was meant to go, or it would have been paid appropriately.

In support of her argument, Petitioner introduced into evidence copies of a letter from Nationstar Mortgage dated March 17, 2016 reflecting the Payoff Amount; Nationstar Mortgage’s Payoff Statement; ALTA Settlement Statement from Stewart Title Company and accompanying documentation; a Payoff Statement from OHSI (Oregon Homeownership Stabilization Initiative) and a Preliminary Title Report.

The Court is not convinced that the evidence submitted by Petitioner meets her burden of proof. After a careful examination of the documentary evidence produced, the Court has instead determined that Petitioner’s documentation is insufficient and fails to support her claim that the subject 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 herein has failed to produce evidence of a written release, from HUD, that effectively discharges Petitioner for the debt associated with the Subordinate Note. Likewise, there is no proof in the record that valuable consideration was paid by Petitioner to HUD in satisfaction of the subject debt. As a result, the subject debt remains enforceable.

The Secretary’s right to collect the alleged debt in this case emanates from the terms of the Note, not from the terms of payoff statements from the primary lender. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). Neither the title company’s Payoff Statement nor the letter from OHSI to Petitioner provides sufficient evidence that Petitioner has been released from the debt so claimed by HUD. In fact, upon reviewing further the letter received by Petitioner from Nationstar Mortgage, it is specifically stated that, “Our records indicate that you have a Subordination Deed of Trust with the Secretary of Housing and Urban Development (HUD). *The Subordination Deed of Trust with HUD must be paid in full when you pay off your FHA first mortgage.* (Emphasis added). *Hearing Request*, attachment, Nationstar Letter dated March 17, 2016.

The instructions provided in writing directly to Petitioner were unambiguous regarding payment in full by Petitioner for the subject debt to be satisfied in this case. Consequently, the onus falls on Petitioner, not on the Title Company, to ensure that the subject debt is fully satisfied. Because Petitioner has failed to produce, for the Court's review, either evidence of a written release from HUD for Petitioner's obligation to pay the subject debt, or evidence of valuable consideration paid by Petitioner to HUD in satisfaction of the debt, the Court finds that Petitioner failed to meet her burden of proof and failed to produce evidence that successfully refutes or rebuts the case presented by the Secretary.

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's claim that the subject debt is unenforceable fails for lack of sufficient and credible proof.


### **ORDER**

Based on the foregoing, Petitioner remains contractually obligated to pay the debt 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

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**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.