

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

In the Matter of:

Lourdes Ortiz,

Petitioner.

17-VH-120-AO-064

7-210107070A

June 12, 2018

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on June 23, 2017, by Petitioner Lourdes Ortiz (“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 June 23, 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 July 9, 2017 and January 4, 2018, Petitioner filed her *Statement* in support of her position. On September 1, 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 December 8, 2015, Lourdes Ortiz ("Petitioner") and Jose Gonzalez executed and delivered to the Secretary a Subordinate Note ("Note"), in the amount of \$11,800.44. The Note secured a Subordinate Mortgage held by the Secretary. *Sec'y. Stat.* at ¶ 2, Ex. 1, *Declaration of Brian Dillon*¹ ("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.* at ¶ 2, Ex. 2, Note. In exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec'y. Stat.* at ¶ 3, Ex. 1, *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.* at ¶ 4; Ex. 1, *Dillon Decl.* ¶ 4; Ex. 2, Note at ¶ 3(A)(i & iii).

On or about December 13, 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. *Sec'y. Stat.* at ¶ 5, Ex. 1, *Dillon Decl.*, ¶ 4.

HUD has attempted to collect the amounts due under the Note, but Petitioner remains delinquent and indebted to HUD. *Sec'y. Stat.* at ¶ 6, Ex. 1, *Dillon Decl.*, ¶ 5.

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

- a. \$11,800.44 as the total unpaid principal balance as of July 30, 2017;
- b. \$39.32 as the unpaid interest on the principal balance at 1% per annum through July 30, 2017;
- c. \$745.72 as the unpaid penalties and administrative costs through July 30, 2017; and
- d. interest on said principal balance from July 31, 2017 at 1% per annum until paid.

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

A Notice of Intent to Collect by Treasury Offset was mailed to Petitioner on May 15, 2017. *Sec'y. Stat.* at ¶ 8, Ex. 1, *Dillon Decl.*, ¶ 6.

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

DISCUSSION

Petitioner does not deny that the subject debt is owed as claimed by the Secretary. Instead, Petitioner claims that:

The title company [Legend Title and Abstract LLC] representatives then advised us of our final profit amount. In order to make sure of the final amount, he repeatedly asked if any money were to go anywhere other than us to which they replied that all of the moneys were to go to us.

Petitioner's Statement date July 19, 2017, via email.

Petitioner later claims "At this point I am just trying to pay this and move on; nevertheless I feel cheated and taken advantage of by the escrow company, and I feel like they should be also hold accountable for at least something because what they had done." *Petitioner's Letter* filed January 4, 2018. As support for full payment of the subject debt, Petitioner introduces into evidence the name and address of the title company along with copies of the *Statements* referenced earlier. *Hearing Request* dated June 23, 2017.

For Petitioner not to be held liable for the full amount of the subject 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). After a careful examination of the record, the documentation introduced by Petitioner herein does not support Petitioner's claim that the subject debt is unenforceable or paid in full. Petitioner failed to introduce evidence to prove that HUD issued directly to Petitioner a written release that effectively discharged Petitioner from the subject debt, or proof that the subject was paid in full and accepted by HUD.

The Secretary's right to collect the subject debt in this case emanates from the terms of the Note, not from the information provided by a title company. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). Because the onus falls on Petitioner to ensure that the subject debt was verified as paid in full, Legend Title is not responsible for submitting to the Court evidence or proof of payment for the subject debt since it is not a party to this claim. This Court has consistently maintained 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). Accordingly, the Court finds, consistent with case law precedent, that the subject debt remains past due and enforceable because Petitioner lacks sufficient and credible proof to prove otherwise.

As a final point, Petitioner states "At this point I am just trying to pay this and move on...." *Petitioner's Letter* filed January 4, 2018. While Petitioner may wish to negotiate repayment terms with the Department at this time, this Court is not authorized to do so by

extending, recommending, or accepting any payment plan or settlement offer on behalf of the Department. Petitioner may want to discuss this matter with Counsel for the Secretary or Michael DeMarco, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152, extension 2859.

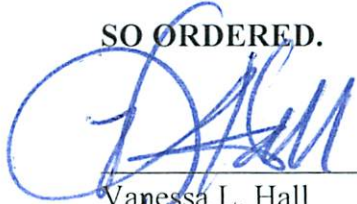
ORDER

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

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.