

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

In the Matter of:

Daniel and Kerri Vincent,

Petitioners

17-VH-0125-AO-068

7-210103890B

August 22, 2018

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on July 18, 2017, by Petitioners Daniel and Kerri Vincent (“Petitioners”) 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 Petitioners’ 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 July 18, 2017, the Court stayed the issuance of an administrative offset of any federal payment due to Petitioners until the issuance of this written decision. *Notice of Docketing, Order, and Stay of Referral (Notice of Docketing)* at 2. In addition to the *Statement* filed on July 18, 2017 along with their *Hearing Request*, Petitioners also filed documentary evidence on October 5, 2017 in support of their position. On October 27, 2017, the Secretary filed a *Secretary’s Statement (Sec’y. Stat.)* and 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 October 2013, the HUD-insured loan on Petitioners' home was in default, and Petitioners were threatened with foreclosure. *Sec'y. Stat.* at ¶ 2, Ex. A, *Declaration of Brian Dillon*¹ ("*Dillon Decl.*"), ¶ 4. To prevent the lender from foreclosing, HUD advanced funds to Petitioners' lender to bring the primary note current. *Id.*

In exchange for foreclosure relief, on October 17, 2013, Petitioners executed a Subordinate Note ("Note") in the amount of \$26,394.90 in favor of the Secretary. *Sec'y. Stat.* at ¶ 2, Ex. B, Note. Paragraph 4(A) of the Note cites specific events that make the debt become due and payable. One of those events is the payment in full of the primary note. See Note at ¶ 4(A)(i). On or about September 20, 2016, the FHA insurance on Petitioners' primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full. *Sec'y. Stat.* at ¶6; Ex. A, *Dillon Decl.* ¶ 4; Ex. B, Note at ¶ 4(A)(i & iii).

Upon payment in full of the primary note, Petitioners were to make payment to HUD on the Note at "U.S. Department of HUD, C/O DEVAL LLC, Westpoint 1 – 1255 Corporate Drive, Suite 300, Irving, TX 75038, ... or any such other place as [HUD] may designate in writing by notice to Borrower." *Sec'y. Stat.* at ¶ 7, Ex. B, Note, ¶ 4(B).

Petitioners failed to make payment on the Note at the place and in the amount specified above. Consequently, Petitioners' debt to HUD is delinquent. *Sec'y. Stat.* at ¶8; Ex. A, *Dillon Decl.* ¶ 5.

The Secretary has made efforts to collect this debt from Petitioners but has been unsuccessful. Therefore, Petitioners are justly indebted to the Secretary in the following amounts:

- (a) \$26,394.90 as the unpaid principal balance as of September 30, 2017;
- (b) \$153.93 as the unpaid interest on the principal balance at 1% per annum through September 30, 2017;
- (c) \$1,588.97 as the unpaid penalties on the balance through September 30, 2017;
- (d) \$35.33 as the unpaid administrative costs as of September 30, 2017; and
- (e) interest on said principal balance from October 1, 2017 at 1% per annum until paid.

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

Sec'y. Stat. at ¶ 9; Ex. A, *Dillon Decl.* ¶ 5.

A Notice of Intent to Collect by Treasury Offset dated January 17, 2017 was sent to Petitioner at 656 Norwood Creek Road, Winchester, TN 37398-2982. *Sec'y. Stat.* at ¶ 10; Ex. A, *Dillon Decl.* ¶ 6.

DISCUSSION

Petitioners do not deny that they owe the subject debt so claimed by the Secretary. Instead, Petitioners claim that:

In regards to claim number 7-210103890B I, Daniel Vincent and my wife Kerri Vincent, believe this debt to have been settled. Enclosed is a copy of the Substitution of trustee and the Deed of Reconveyance[.] These documents were provided to us during the sale of our property at 7906 196th St E, Spanaway, WA 98387 showing these matters as having been settled.

Petitioners' *Hearing Request* filed July 18, 2017.

Petitioners further claim that efforts were made with HUD's representative to settle the claim herein by submitting evidence to prove subject debt had been paid, but such efforts were unsuccessful. See Petitioners' *Hearing Request*. As support, Petitioners introduced into evidence copies of a letter from the Nationwide Title Clearing, Inc. for CitiMortgage indicating a Satisfaction or Release of Mortgage; a Substitution of Trustee; a Deed of Reconveyance; and a Settlement Statement from Rainier Title. See *Hearing Request*, Attachments; *Petitioners' Declaration* filed on October 5, 2017, Attachments. Petitioners also stated that "The Nationwide Clearing documents were completed prior [to] the closing of my home.... The final settlement statement from the closing of my house showed a payment to CitiMortgage, as they served as our primary mortgage lender. This statement led me to believe that CitiMortgage had assumed responsibility and paid the HUD debt." Finally, Petitioners concluded that

Rainier Title and I relied upon the documents provided from Nationwide Clearing as a representation of CitiMortgage to be factual and correct in releasing me from the debt with HUD. HUD elected Nationwide Clearing to serve as the trustee of the deed and Nationwide Clearing released me of the debt and provided me and Rainier Title a Deed of Reconveyance stating that the obligations have be [sic] satisfied.

Petitioners' Declaration at ¶¶ 2, 3.

Based on a review of the record, the Court is not convinced that the Petitioners have met their burden of proof because the evidence introduced by Petitioners is insufficient as proof that the subject debt is already fully satisfied. 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). For Petitioners 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 Petitioners' 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). There is no evidence in the record of proof of release directly from HUD, or proof of exchange of valuable consideration accepted by HUD.

The Court acknowledges Petitioners' proof that payment was made on the primary mortgage, but further examination of the Settlement Statement from Rainier Title referenced earlier by Petitioner only indicates payments to CitiMortgage and a loan to KeyBank – Cleveland Loan Services. No such indication was made of a payment directly to HUD for the subject debt. See Petitioners' Declaration, Attachments. Consequently, the onus falls on Petitioner, not on Metropolitan Title Company or Wells Fargo Bank, to ensure that the subject debt was satisfied with proof of the same properly documented.

The record also provided clarification regarding what led to the confusion about payment of the subject debt. According to the Secretary,

When Petitioners obtained foreclosure relief from HUD in October 2013, two subordinate deeds of trust were recorded in the Pierce County, Washington clerk's office. One was recorded in error. The Deed of Trust recorded under instrument number 201310300301 on October 30, 2013 is valid and references the Subordinate Note executed by Petitioners on the same day. In error, a second Deed of Trust was recorded on December 18, 2013 under instrument number 201312180169.

Sec'y's Stat., Ex. A, *Dillon Declaration*, ¶ 7; Ex. C, *Attached Deed of Trust* dated October 17, 2013; Ex. D, *Attached Erroneous Deed of Trust*.

Again, Petitioners herein have failed to introduce evidence of a written release, from HUD, that effectively refutes or discharges Petitioners from the debt associated with the Subordinate Note. 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, Petitioners, through counsel, alleged that collection of the subject debt “will cause an undue hardship.” *Hearing Request*, Attached Letter dated May 31, 2017. Case law precedent has been established that maintains “in administrative offset cases evidence of financial hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is past-due and enforceable.” Edgar Joyner, Sr., HUDBCA No. 04-A-CH-EE052 (June 15, 2005); Anna Filiziana, HUDBCA No. 95-A-NY-T11 (May 21, 1996); Charles Lomax, HUDBCA No. 87-2357-G679 (February 3, 1987). No regulation or statute currently exists that permits financial hardship to be considered as a basis for determining whether a past-due debt may be collected in administrative offset cases. Thus, consistent with case law precedent and statutory limitations, the Court finds that financial hardship cannot be considered as a defense herein because the debt owed by Petitioners is sought to be collected by means of administrative offset.

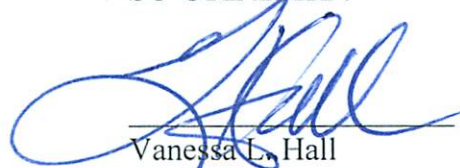
ORDER

Based on the foregoing, Petitioners remain 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.