

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

In the Matter of:

**Venus Wethington,**

Petitioner.

17-VH-0132-AO-071

7-210105700A

September 10, 2018

**DECISION AND ORDER**

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on July 20, 2017, by Petitioner Venus Wethington (“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 July 21, 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 18, 2017, Petitioner filed her *Statement* and additional documentary evidence in support of her position. On September 29, 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.

**FINDINGS OF FACT**

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 April 7, 2014, Venus Wethington ("Petitioner") executed and delivered to the Secretary a Subordinate Note ("Note"), in the amount of \$41,427.73. *Sec'y. Stat.* ¶ 2, Ex. 1, *Declaration of Gary Sautter*<sup>1</sup> ("Sautter Decl."), ¶ 4. The Note secured a Subordinate Mortgage held by the Secretary. *Sec'y. Stat.* ¶ 2.

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. *Id.* Ex. 2.

By terms of the Note, the amount to be repaid thereunder becomes due and payable "(4)(A) [o]n August 1, 2043 or, if earlier, when the first of the following events occurs: (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. 2, Note, ¶ 3(A)(i).

On or about November 8, 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, *Sautter 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, *Sautter Decl.* ¶ 5.

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

- a. \$41,427.73 as the total unpaid principal balance as of August 31, 2017;
- b. 5172.55 as the unpaid interest on the principal balance at 1% per annum through August 31, 2017;
- c. \$2,529.28 as the unpaid penalties and administrative costs through August 31, 2017; and
- d. interest on said principal balance from September 1, 2017 at 1% per annum until paid.

*Sec'y. Stat.* at ¶ 7; Ex. 1, *Sautter 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, *Sautter Decl.* ¶ 6. The September 15, 2016 Bank of America statement provided by Petitioner indicates her FHA first mortgage balance shows an interest-bearing principal in the amount of \$102,646.75 and the non-interest-bearing principal of \$3,334.02. Petitioner has not provided evidence that her Subordinate Mortgage dated April 7,

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<sup>1</sup> Gary Sautter is Acting Director of the Asset Recovery Division of HUD's Financial Operations Center.

2014 in the amount of \$41,427.73 was paid to HUD as the result of the sale of her property. *Sec'y. Stat.*, Ex. 1, *Sautter Decl.* ¶ 7.

The Secretary respectfully requests a finding that Petitioner's debt is past due and legally enforceable, and that the stay of referral of this matter to the U.S. Department of Treasury for collection by Treasury Offset be vacated, so that the Secretary may proceed with administrative offset proceedings against Petitioner.

### **DISCUSSION**

Petitioner contends, first, that she does not owe the debt because it was allegedly paid off when her home was sold; and second, that if the debt is determined to be owed it would create a financial hardship for her. Petitioner states that "Bank of America told me I would owe HUD \$3,334.02 at closing which was paid. They also told the title company this when this came up at closing." *Hearing Request* at 1. As support, Petitioner introduced into evidence copies of the Notice of Disclosure of Debt to Consumer Reporting Agency, the email communications she had with Fidelity National Title Company, and the Bank of America Home Loan Account dated September 15, 2016.

The Court is not convinced, based on the evidence introduced by Petitioner, that she has met her burden of proof. The Secretary's right to collect the alleged debt in this case emanates from the terms of the Note, not from promises made by the title company or from the primary lender. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). After a careful examination of Petitioner's evidence, the Court has determined that the evidence is insufficient as support for Petitioner's allegation of full payment. For Petitioner not to be held liable for 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). None of the evidence introduced by Petitioner indicates that she has been released from this debt, or has exchanged valuable consideration for the alleged debt amount. As a result, Petitioner's claim for full payment of the debt fails for lack of proof.

Next, Petitioner contends that collection of the subject debt would cause her financial hardship. *Pet'r's Docs.* She states, "I would not have sold my house to put myself in a situation where I may have to declare bankruptcy. I have included my paystubs to show you what I make. I have been applying for other jobs for a higher wage and I have signed up to drive with several delivery companies and Uber to make extra money. My daughter has also started working to help pay rent...I cannot pay for this." As support for her claim of hardship, Petitioner provided copies of her employee pay stubs for August 2, 2017 and August 9, 2017, her current lease agreement, and a list of her monthly household expenses. *Petitioner's Documentary Evidence (Pet'r's Docs.)* file August 18, 2017.

Case law precedent has been established that "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 herein as a defense because the alleged debt owed by Petitioner is sought to be collected by means of administrative offset.

### **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.**

  
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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.