

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

In the Matter of:

Melissa Stahovich,

Petitioner.

17-VH-0211-AO-078

7-21011120A

April 11, 2019

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on September 19, 2017, by Petitioner Melissa Stahovich (“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”). 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.

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 September 19, 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 October 16, 2017, Petitioner filed her *Statement* in support of her claim. On November 21, 2017, the Secretary filed a *Secretary’s Statement*, 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, as a result of a defaulted loan that was insured against non-payment by the Secretary.

On or about February 9, 2009, Melissa Stahovich ("Petitioner") executed and delivered to the Secretary three Subordinate Notes (collectively, "Notes") totaling the amount of \$18,185.01. *Sec'y. Stat.* ¶ 2, Ex. 2, Note; Ex. 2, *Declaration of Brian Dillon*¹ ("Dillon Decl."), ¶ 4. Each of the Notes secured a separate Subordinate Mortgage held by the Secretary. *Sec'y. Stat.* ¶ 2, Ex. 2, Note.

As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA insured mortgage lender; and in exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec'y. Stat.* ¶ 3, Ex. 1, *Dillon Decl.*, ¶ 4. In exchange for such funds, on each such occasion, Petitioner executed a separate Subordinate Note in favor of the Secretary. *Sec'y. Stat.* ¶ 3, Ex. 1, *Dillon Decl.*, ¶ 4. Specifically, the Notes executed by Petitioner are as follows: a Subordinate Note in favor of HUD dated February 9, 2009 in the amount of \$3,824.04 ("Note 1"); a Subordinate Note in favor of HUD dated January 5, 2010 in the amount of \$5,805.96 ("Note 2"); and a Subordinate Note dated July 26, 2013 in the amount of \$8,555.01 ("Note 3"). *Id.*

By terms of the Notes, the amount to be repaid thereunder becomes due and payable: "(4)(A) when the first of the following events occurs: (i) borrower has paid in full all amounts due under the primary note and related mortgage, deed of trust or similar security instrument insured by the Secretary; 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. 1, *Dillon Decl.*, ¶ 4.

On or about February 29, 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.* ¶ 5, Ex. 1, *Dillon Decl.*, ¶ 4. HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec'y. Stat.* ¶ 6, Ex. 1, *Dillon Decl.*, ¶ 5.

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

- a. \$18,185.01 as the unpaid principal balance as of September 30, 2017;
- b. \$45.45 as the unpaid interest on the principal balance at 1 % per annum through September 30, 2017; and
- c. interest on said principal balance from October 1, 2017 at 1 % per annum until paid.

¹ Brian Dillon is Director of the Asset Recovery Division of HUD's Financial Operations Center.

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

A Notice of Intent to Collect by Treasury Offset ("Notice"), dated August 31, 2017, was mailed to Petitioner's last known address. *Sec'y. Stat. ¶ 8; Ex. 1, Dillon Decl., ¶ 6.* In accordance with 31 C.F.R. 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement with HUD. However, to date, Petitioner has not entered into any such agreement. *Sec'y. Stat. ¶ 7; Ex. 1, Dillon Decl., ¶ 5.*

As requested by Petitioner in her August 31, 2017 letter to HUD's Office of Hearings and Appeals, copies of Petitioner's three Notes and their related Subordinate Mortgages were sent to Petitioner.

DISCUSSION

Petitioner claims that she does not owe the debt because it was paid off by Preferred Title Company or Ocwen Mortgage. More specifically, Petitioner states in her *Hearing Request*, "We are questioning the debt in question. Claim number 7-210111120A. We are currently working with Ocwen to try and figure this out." *Petitioner's Hearing Request*. Petitioner further states:

We contacted Ocwen who in turn told us that they do not work with HUD and our loan with them has been satisfied. We contacted HUD and Mr. Madura again and this time he told us that there was a lien on our property. At that time we contacted Preferred Title to have them look into that matter. We talked with Cindy there and she said that there was no lien on the property. We contacted Ocwen again and asked for transaction history. We asked both HUD and Ocwen to show us proof that HUD gave Ocwen money to make our mortgage current.... Thank You for taking the time to look into this matter for us.

Petitioner's Letter filed on October 16, 2017.

There is no evidence in the record in support of Petitioner's allegations.

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 produce any evidence of either 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). Such is the case herein for the Court to hold Petitioner responsible for the full amount of the subject debt.

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). Because Petitioner has failed to produce evidence that proves that HUD has directly released Petitioner from the subject debt, or that Petitioner has offered HUD valuable consideration in satisfaction of the debt, the Court must find that she remains contractually obligated to pay the debt so claimed by the Secretary.

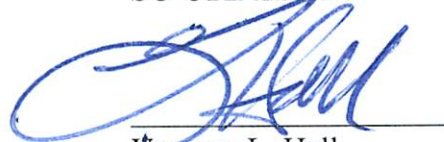
ORDER

Based on the foregoing, the subject debt is past due and is enforceable against Petitioner as 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.