

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

In the Matter of:

SUSAN M. SCHLIEWE,

Petitioner.

18-AM-0237-AO-066

7210136510B

June 21, 2019

DECISION, RULING, AND ORDER

On or about September 10, 2018, Susan M. Schlieve, ("Petitioner") filed her *Request for Hearing* concerning the amount, enforceability, or payment of a debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD" or "the Secretary").

This alleged debt resulted from a defaulted loan which was insured against non-payment by the Secretary, from an overpayment by HUD. This administrative court has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable, (24 C.F.R. § 17.61 et seq.), and is authorized by the provisions of the Deficit Reduction Act of 1984 (31 U.S.C. § 3716) and the Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720), and applicable Departmental regulations to adjudicate this matter. As a preliminary matter, the Secretary filed a *Motion for Leave to File Documentary Evidence* on February 4, 2019. For the reasons stated therein, and for good cause shown, that motion is GRANTED, and the Secretary's documentary evidence filed on February 4, 2019 is admitted into the record in this case.

BACKGROUND

On or about June 28, 2013, Petitioner sought financial assistance from HUD to help her avoid possible foreclosure of her mortgage with her primary lender, Ocwen Mortgage Company ("Ocwen"). HUD loaned Petitioner the sum of \$3,163.62 to help her avoid defaulting on her mortgage with Ocwen. (*See Secretary's Statement*, ("Sec'y Stat."), ¶ 3; Exh. 2, Declaration of Brian Dillon, ("Dillon Decl.") Director of Asset Recovery Division, HUD Financial Operations Center, ¶ 4.) Petitioner executed and duly delivered a subordinate note ("Note"), evidencing this loan to HUD. (*See Sec'y Stat.*, Exh. 1, the Note, dated June 28, 2013). Under the terms of the Note, Petitioner was to repay the principal amount of the unpaid balance on the Note until it was paid in full. (*See Sec'y Stat.*, Ex. 2, ¶4). The Note cited specific events that could cause the remaining unpaid balance of the debt to become immediately due and payable - one of which was when Petitioner's underlying mortgage to her primary lender was refinanced or otherwise paid in full. (*See Sec'y Stat.*, Ex. 1, ¶¶ 4(A)(i) & (iii)).

On or before March 1, 2018, Petitioner's primary lender notified HUD that Petitioner's underlying mortgage had been paid in full. This automatically triggered both the termination of the primary lender's insurance contract with the Federal Housing Administration, as well as the provisions of ¶ 4(A)(i) & (iii) of the Note, requiring Petitioner to pay the full amount owed under the Note to HUD. HUD, thereafter, made its demand upon Petitioner to pay the amounts owed, but Petitioner failed to do so. As a result, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$3,163.62 as the unpaid principal balance as of December 30, 2018;
- b) \$15.84 as the unpaid interest on the principal balance at 1% per annum through December 30, 2018;
- c) \$225.78 as the unpaid penalties and administrative costs through December 30, 2018; and
- d) interest on said principal balance at 1% per annum until paid.

(See *Sec'y Stat.*, Exh. 2, Declaration of Brian Dillon ¶¶ 5,7).

On or about August 20, 2018, a Notice of Intent to Initiate Treasury Offset Proceedings ("Notice") was mailed to Petitioner. (See *Sec'y Stat.*, Exh. 2, ¶ 6). Petitioner was given an opportunity to enter into a written repayment agreement under terms acceptable to HUD (See *Sec'y Stat.*, ¶ 8, Exh. 2, ¶ 7).

DISCUSSION

Petitioner filed documentary evidence in support of her *Hearing Request*, on September 10, 2018, and October 7, 2018. That documentary evidence consisted of a letter dated September 3, 2018, ("*Pet's Ltr.*"), and an email, dated October 7, 2018, that attached a copy of the *Notice of Docketing, Order, and Stay of Referral* in this case, and Petitioner's Home Affordable Mortgage Agreement ("*Pet's HAMA*"), which was prepared by Ocwen, and filed in Dodge County, Wisconsin on October 25, 2013. Accordingly, the Court finds that Petitioner has met her initial burden of proof which obligates the Secretary to come forward with documentary evidence to prove Petitioner's indebtedness to the Department.

The Secretary's documentary evidence consists of the *Secretary's Statement*, together with an accompanying sworn declaration by Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center; a copy of the Subordinate Note, and accompanying notices and documents. (See *Sec'y Stat.*, Ex. 1; Ex. 2).

Petitioner states that she does not owe the alleged debt in this case because she has filed numerous documents consisting primarily of arguments and denials, but little in the way of proof. The correspondence between her and HUD officials that she filed, made reference to her primary mortgage with Ocwen, and her repayment discussions with HUD, but did not demonstrate that the Note was ever paid.

In Petitioner's *Request for Hearing*, dated September 10, 2018, she states that she "double-checked with the title company recently and there are NO Liens against the title from

HUD." *Pet's Ltr.* (emphasis in original). Petitioner further states that she has "consulted numerous professional and have been told straight out by them that since the house sale is closed; it is a done deal and I owe nothing." *Id.* Petitioner has attached the Home Affordable Mortgage Agreement or HAMA that she entered into as between herself and her primary lender, (Ocwen Mortgage Company.) But Petitioner's documentary evidence makes little mention of the Subordinate Note, itself. The Note was the actual document that she entered into with HUD for the purpose of obtaining the funds necessary to bring her mortgage with Ocwen Mortgage, current. *Sec'y Stat.*, Exh. 1., Note.

Pet's HAMA document merely set forth Petitioner's continuing obligations to her primary lender pursuant to the loan modification that was made possible by additional funding provided by the Department. Petitioner's obligation to repay her \$3,163.62 loan from HUD did not arise from *Pet's HAMA*, nor was Petitioner's Note with HUD legally required to be secured with a lien against Petitioner's property. *Sec'y Stat.*, Exh. 1, Note.. Petitioner received the benefit of HUD funding which alleviated the possibility that her property could have been foreclosed on. She signed the Note, and was therefore aware of her obligation to repay her debt to HUD. She failed to do so, and does not deny that she failed to make any payment on the debt. It is inconsequential that third parties may have misinformed Petitioner about her obligation to repay her debt to HUD.

Petitioner has not brought forth any evidence to show that the amounts claimed by the Secretary are inaccurate or unenforceable. This Court has consistently maintained that "[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or unenforceable." (See *Michael R. Bridges*, HUDOHA No. 13-AM-0125-AG-054 (August 13, 2013); *Eric and Eliza Rodriguez*, HUDOHA No. 13-AM-0061-AG-023 (April 17, 2013)(citing *Franklin Harper*, HUDBCA No. 01-D-CH-AWG41 (March 23, 2005); *Troy Williams*, HUDOA No. 09-M-CH-AWG52 (June 23, 2009), citing *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Here, Petitioner has failed to come forward with any appreciable evidence to meet her burden of proof. I therefore find that Petitioner is indebted to the Department in the amounts claimed by the Secretary.

ORDER

For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of the 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 amounts claimed by the Secretary.

SO ORDERED,

A handwritten signature in blue ink, appearing to read "H. Alexander Manuel", is written over a horizontal line.

H. Alexander Manuel
Administrative Judge