

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

In the Matter of:

**Carolyn Okafor,**

Petitioner.

18-VH-0039-AO-014

7-210114350A

August 5, 2019

**DECISION AND ORDER**

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on November 8, 2017, by Petitioner Carolyn Okafor (“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**

This Court 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**

On November 9, 2017, the Court stayed the issuance of an administrative offset of any federal payment due to Petitioner until the issuance of this written decision pursuant to 24 C.F.R. § 17.81(a). *Notice of Docketing, Order, and Stay of Referral (Notice of Docketing)* at 2. On January 31, 2018, Petitioner filed her *Statement (Pet’r.’s Stat.)* and additional documentary evidence in support of her position. On March 6, 2018, the Secretary filed the *Secretary’s Statement (Sec’y. Stat.)* along with documentary evidence in support of his position. This case is now ripe for review.

**BACKGROUND**

This debt collection action is 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.

On or about January 1, 2004, the primary mortgage on Petitioner's home was in default. *Sec'y. Stat.* at ¶ 3; Ex. 1, *Declaration of Brian Dillon*<sup>1</sup> ("*Dillon Decl.*"), ¶ 4. HUD advanced funds to Petitioner's FHA insured mortgage lender to provide foreclosure relief. *Id.* Subsequently, Petitioner and Chike E. Okafor executed and delivered to the Secretary a Subordinate Note ("Note 1") in the amount of \$10,125.90. *Sec'y. Stat.* at ¶ 2.

The following year, Petitioner defaulted again on her mortgage. *Sec'y. Stat.* at ¶ 3; Ex. 1, *Dillon Decl.*, ¶ 4. Petitioner entered into a stipulated Partial Claim Agreement ("Agreement") with CitiMortgage, the holder of Petitioner's primary mortgage note. *Sec'y. Stat.*, Ex. 1, *Dillon Decl.*, Ex. A; *Pet'r.'s Stat.*, *Attachments*. The Agreement arranged for Petitioner to contribute, in the form of five regularly scheduled payments, \$2,586.29, and HUD would advance the remaining \$14,646.29 to bring Petitioner's mortgage current and prevent foreclosure. *Id.* On or about September 16, 2005, HUD advanced the funds to CitiMortgage, and Petitioner executed and delivered a second Subordinate Note ("Note 2") in the amount of \$14,646.29. *Sec'y. Stat.* at ¶ 2; Ex. 2, Note. Note 1 and Note 2 (referred to collectively herein as "Notes") secured separate Subordinate Mortgages held by the Secretary. *Sec'y. Stat.* at ¶ 2.

Paragraph 4(A) of the Notes lists conditions which make the debt become due and payable when fulfilled. *Sec'y. Stat.* at ¶ 4; Ex. 2, Note at 4(A). One of those events is the payment in full of the primary note. *Sec'y. Stat.* at ¶ 4; Ex. 2, Note at 4(A)(i). On or about November 23, 2015, the lender for Petitioner's primary mortgage indicated the primary note and mortgage was paid in full, and the FHA mortgage insurance was terminated. *Sec'y Stat.* at ¶ 5, Ex. 1, *Dillon Decl.*, ¶ 4. Thus, the Notes became due and payable, and Petitioner was to make payments to HUD. *Id.*

The Secretary has unsuccessfully attempted to collect the debt from Petitioner, and Petitioner remains delinquent under the Notes. *Sec'y. Stat.* ¶ 6; Ex. 1, *Dillon Decl.*, ¶ 5. Therefore, HUD alleges that Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$16,255.47 as the total unpaid principal balance as of February 28, 2018;
- (b) \$40.62 as the unpaid interest on the principal balance at 1% per annum through February 28, 2018; and
- (c) interest on said principal balance from March 1, 2018, at 1% per annum until paid.

*Sec'y. Stat.* ¶ 6; Ex. 1, *Dillon Decl.*, ¶ 5.

Petitioner submitted a payment to HUD on or around December 29, 2017, in the amount of \$10,1235.90, representing the outstanding principal balance of Note 1. *Sec'y. Stat.* at ¶ 9; Ex. 1, *Dillon Decl.*, ¶ 8. HUD credited Petitioner for this full amount, and it is reflected in the total above. *Id.* The Secretary requests this Court find Petitioner's remaining debt past due and legally enforceable.

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<sup>1</sup> Brian Dillon is Director of Asset Recovery Division for the U.S. Department of Housing and Urban Development.

## DISCUSSION

Petitioner does not dispute the existence or amount of subject debt. Petitioner instead contends that there were two Subordinate Notes (Note 1 and Note 2) subject to dispute, the first (Note 1, FHA #137-2219836-703) executed on January 22, 2004 in the amount of \$10,925.90, and the second (Note 2, FHA# 703-1372219836) executed on September 16, 2005 in the amount of \$14,646.29. Petitioner maintains that she was unaware of Note 2 and therefore should not be held liable for the same. Because of the partial claim payments Petitioner made to CitiMortgage from August 30, 2005, to January 17, 2006, she further maintains that she should be released from her obligation to pay the subject debt. *Pet'r. 's Stat.* Petitioner claims that "Citi Mortgage [sic] failed to secure the subordinate loan and we were told that the only option is to make payments based on the partial claim, which we did." *Pet'r. 's Stat.* As support, Petitioner introduced into evidence copies of Notes 1 and 2; a letter dated describing the stipulated Partial Claim Agreement between Petitioner and CitiMortgage; and, receipts of payments to CitiMortgage for the Borrower's contribution of the Agreement. *Pet'r. 's Stat., Attachments.*

After reviewing the record, the Court has determined that Petitioner failed to meet, by preponderance of the evidence, her burden of proof that the subject debt either does not exist or is unenforceable due to partial claim payments. First, Petitioner's contention that she did not know of Note 2 is inconsistent with the evidence she presented. Petitioner submitted to the Court copies of Notes 1 and 2 that she signed, along with a letter from CitiMortgage dated August 29, 2005 in which the terms of her agreement to pay HUD were well-defined. The letter from CitiMortgage explicitly mentioned her liability under Note 2 in the amount of \$14,646.29. So, Petitioner's execution of Note 2 along with the CitiMortgage letter validating stipulation of the same are sufficient as proof of Petitioner's agreement to pay the subject debt according to the terms of the Note. *See Sec'y. Stat., Ex. 1, Dillon Decl., ¶ 9; Ex. A.* As a result, the Court finds that Petitioner's claim fails for lack of proof.

Second, Petitioner contends that the partial claim payments released her from liability to HUD for the subject debt. The Court has determined that this claim is without merit. Based on Petitioner's own evidence, the CitiMortgage letter provided support only for the contention that Petitioner was not released from the subject debt by her partial claim payments. Even though Petitioner made payments toward the Borrower's contribution of the partial claim, the CitiMortgage receipts do not reflect satisfaction of the subject debt by means of those payments. The stipulated Partial Claim Agreement offered as proof of payment by Petitioner instead reflects that payment of the subject debt was excluded from her contribution and that, as a result, it remains unsatisfied. So, for Petitioner not to be held liable for the full amount of the subject debt, there must be a written release from HUD explicitly relieving Petitioner's obligation, "or valuable consideration accepted by the lender" indicating the intent to release. Franklin Harper, HUDBCA No. 04-D-CH-AWG41 (Mar. 23, 2005).

In this case, Petitioner failed to produce evidence of a written release from HUD that discharged the debt associated with Notes 1 and 2. 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 previously

consented to paying the subject debt but later failed to present sufficient evidence of a written release from the same, the subject debt remains past due and enforceable and Petitioner is obligated to pay the debt so claimed by the Secretary.

As a final point, Petitioner submitted along with her *Hearing Request* a proposed six-month repayment plan for consideration by the Court. While Petitioner may wish to negotiate repayment terms with the Department, this Court is not authorized to extend, recommend, or accept 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. Petitioner may also request a review of his financial status by submitting to the HUD Office a Title I Financial Statement (HUD Form 56142).

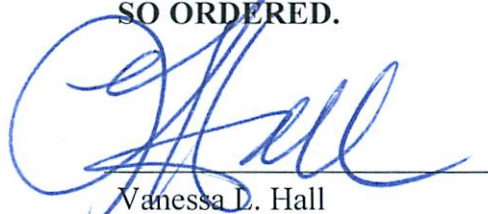
### **ORDER**

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

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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.