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

In the Matter of:	
First World Mortgage Corporation,	18-VH-0084-AO-023 7-207097670A
Petitioner.	June 24, 2019

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Request for Hearing* filed on January 8, 2018, by Petitioner First World Mortgage Corporation pursuant to 24 C.F.R. § 17.69 (a) concerning the enforceability of the alleged debt. 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 AND STANDARD OF REVIEW

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 January 4, 2018, 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. Both parties were granted an extension of time on February 7, 2018 for Petitioner, and on May 18, 2018 for the Secretary. On March 6, 2018, Petitioner, through Counsel, filed a *Statement* and supporting documentary evidence. On June 6, 2018, 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.

Petitioner is a HUD-authorized Direct Endorsement mortgage lender. *Sec'y. Stat.* ¶ 2; see 24 C.F.R. parts 202 & 203. In 2011, Petitioner originated and underwrote a single-family mortgage for borrower Tina M. Parent, FHA Case Number 061-4041432 ("the Parent loan"). *Sec'y. Stat.* ¶¶ 3, 7 n.1; Ex. A: Declaration of Kathleen Porter[1] ("*Ex. A, Porter Decl.*"), Ex. D.
The Parent loan was endorsed for insurance by HUD's Federal Housing Administration ("FHA") on May 9, 2011. *Sec'y. Stat.* ¶ 6; *Ex. A, Porter Decl.* ¶ 5, Ex. D. Thereafter, Petitioner transferred the mortgage to Wells Fargo Bank, N.A. ("Wells Fargo") for servicing. *Sec'y. Stat.* ¶ 7 n.1; Ex. A, *Ex. A, Porter Decl.*, Ex. D. On October 1, 2011, Wells Fargo reported that the loan was in default. *Sec'y. Stat.* ¶ 6; *Ex. A, Porter Decl.* ¶ 5, Ex. D.

On April 3, 2013, HUD's Quality Assurance Division ("QAD") determined that Petitioner had engaged in "non-compliant lending activities" with regard to the loan of Tina Parent (FHA Case No. 061-4041432) ("the Parent loan"). *Sec'y. Stat.* ¶¶ 2-3; *Ex. A, Porter Decl.* ¶ 4, Ex. A. During its review, the QAD found that while underwriting the mortgage of the Parent loan, Petitioner engaged in non-compliant lending activities which exposed HUD to an unacceptable level of risk. (Id.) Specifically, QAD found that Petitioner had overstated the borrower's income, understated the borrower's child support debt, and violated FHA underwriting documentation requirements by relying upon data that was not adequately documented. *Ex. A, Porter Decl.*, Ex. A. Those activities allegedly increased the risk of default on the Parent loan, and correspondingly increased the risk that HUD would be obligated to pay a mortgage insurance claim upon default. *Sec'y. Stat.* ¶ 3; *Ex. A, Porter Decl.* ¶ 4. As a result, effective May 8, 2013, Petitioner entered into an Indemnification Agreement with HUD in which Petitioner agreed to indemnify HUD for losses that HUD incurred as insurer of the Parent loan.[2] *Sec'y. Stat.* ¶¶ 4-5; *Ex. A, Porter Decl.* ¶ 4, Ex. C; *Pet'r.* Ex. C.

According to HUD's records, the Parent loan was endorsed for insurance on May 9, 2011 and just five months later, on October 1, 2011, the loan went into default. *Sec'y. Stat.*, ¶ 6; *Ex. A, Porter Decl.* at ¶ 5, Ex. D, FHA Case Details at pp. 2- 3. On June 19, 2014, Wells Fargo conveyed the property covered by the Parent loan to HUD in exchange for FHA insurance benefits. HUD paid an insurance claim of $156,513.82 to Wells Fargo on June 23, 2014. On May 17, 2017, HUD sold the subject property for $77,700.00. On July 6, 2017, HUD paid additional insurance benefits to Wells Fargo in the amount of $19,327.51. *Sec'y. Stat.* ¶ 7; *Ex. A, Porter Decl.* ¶¶ 5-6, Ex. D & E.

On November 27, 2017, HUD sent Petitioner a Notice of Intent to Collect via Treasury Offset ("Notice of Intent") seeking payment of $109,479.71. Sec'y. Stat., *Ex. A, Porter Decl.*

[1] Kathleen Porter is the Acting Director of the Asset Recovery Division of HUD's Financial Operations Center.

[2] By its terms, the Indemnification Agreement applied to "losses which have been or may be incurred related to [the Parent loan], which is in default, or go into default, through and up to five years from [the] loan's date of endorsement." *Ex. A, Porter Decl.*, Ex. C; *Pet'r. Ex. C.* As previously noted, the loan was endorsed for insurance by FHA/HUD on May 9, 2011 and went into default less than five months later.

¶12; *Pet'r.* Ex. A. This figure represented the amount of HUD's alleged loss on the Parent loan, broken down as follows:

Insurance claim paid to Wells Fargo on June 23, 2014:	$ 156,513.82
Insurance claim paid to Wells Fargo on July 6, 2017:	$ 19,327.51
Maintenance and operation expenses:	$ 7,202.67
Taxes:	$ (526.29)
Sales expenses:	$ 4,662.00
Sales price:	$ (77,700.00)
Total loss:	$ 109,479.71

Sec'y. Stat. ¶ 8; *Ex. A, Porter Decl.* ¶ 6, Ex. E.

Petitioner has not tendered payment as agreed in the Indemnification Agreement. *Sec'y. Stat.* ¶¶ 9-10; *Ex. A, Porter Decl.* ¶¶ 7, 9. Instead, in response to the Notice of Intent, Petitioner has exercised its right to request a hearing before this Court, and now contends that the Agreement is unenforceable. The Secretary maintains that Petitioner is indebted to HUD in the following amounts:

(a) $109,479.71 as the unpaid principal balance as of April 30, 2018;
(b) $2,802.48 in unpaid interest on the principal balance at 5% per annum through April 30, 2018;
(c) $6,459.72 in unpaid penalties as of April 30, 2018;
(d) $35.33 in unpaid administrative costs as of April 30, 2018; and
(e) Interest on the principal balance at 5% per annum from May 1, 2018, until the principal balance is paid.

Sec'y. Stat. ¶ 11; *Ex. A, Porter Decl.* ¶ 7.

Based on the foregoing, the Secretary maintains that because Petitioner has failed to prove that its debt to HUD is not legally enforceable, Petitioner should be held liable to HUD for the full amount of HUD's loss, to wit $109,479.71, plus interest, penalties and costs.

DISCUSSION

The underlying facts of this case are not in dispute. Petitioner instead challenges the terms of the *Indemnification Agreement* ("*Agreement*") executed by the parties and certain QAD findings. Petitioner contends that the Parent loan noted earlier was in fact fully insurable and also fully compliant with the FHA underwriting requirements. *Pet'r. Stat.* ¶¶ 1, 4. Petitioner claims that its underwriter actually *under*stated rather than overstated the borrower's income. (Emphasis added). Id. ¶¶ 2-3. As a remedy, Petitioner requests that this Court render void and unenforceable the *Agreement* due to the mistake made by the company president, Mr. Sodoti, who signed the *Agreement* under the mistaken belief that the Parent loan failed to meet the requisite FHA underwriting guidelines. Id. ¶ 5. Petitioner offers, as evidence, copies of the *Letter to the Court* dated November 20, 2017; *HUD's Revised Underwriter Guidelines*; relevant paystubs from

Petitioner's Loan Origination System; and the *Agreement* executed on July 25, 2013. *Pet'r. Stat., Ex. C.*

In response, HUD claims that Petitioner failed to use prudent practices when underwriting the Parent loan and failed to provide proof of the loan's eligibility for FHA insurance during the QAD review. *Sec'y. Stat.* ¶¶ 14-24. More specifically, HUD maintains that in a July 16, 2013 letter to the QAD Director, Petitioner indicated its "complete agreement" with HUD's income and child support calculations and assured HUD that the underwriter who had handled the Parent loan was no longer employed by Petitioner. *Sec'y. Stat., Ex. A, Porter Decl.* ¶ 4, Ex. B. According to HUD, Petitioner stated that "[W]e have hired more qualified underwriters with more experience in FHA underwriting and are confident this error will not be duplicated." Id. Further, on July 10, 2013, the company president, Frank Sidoti, "signed the *Agreement* on behalf of Petitioner agreeing to indemnify HUD for any losses incurred by the agency in relation to the Parent loan. *Sec'y. Stat., Ex. A, Porter Decl., Ex. C.*

HUD further contends that it would be "impracticable to expect this Court to conduct a post-hoc loan eligibility analysis at this time," particularly since the Petitioner, through its president, initially agreed with QAD's assessment. Id. ¶ 25. HUD instead requests that the Court upholds the *Agreement* and finds, pursuant to said terms, that Petitioner owes a debt that is past due and legally enforceable. As support, HUD offers as evidence copies of an affidavit from the Acting Director of Asset Recovery Division of HUD's Financial Operations, with letter to President of First World dated May 30, 2013; letter dated July 16, 2013 to Mr. DiPetro regarding QAD findings; and, various email communications and relevant attachments.

I. Petitioner did not prove by clear and convincing evidence that a mutual mistake existed.

Petitioner contends that the *Agreement* herein is unenforceable due to mutual mistake because, at the time the *Agreement* was executed in July 2013, both parties mistakenly believed that the Parent loan had been endorsed for FHA insurance only because the underwriter had overstated the borrower's income. Petitioner states that the FHA will not insure a loan unless the borrower's income is "adequate to meet (1) the periodic payments required by the mortgage permitted for insurance, and, (2) other long-term obligations." 24 C.F.R. § 203.33.

To establish mutual mistake, one must show that both parties to the contract shared the same erroneous belief, and further he [the mistaken party] must overcome a heavy presumption that the deliberately prepared and executed contract manifests the true intentions of the parties, especially between sophisticated parties like counseled businessmen. Healy v. Rich Prods. Corp., 981 F.2d 68, 73 (2d Cir. 1992) (rejecting reformation of a contract including a release provision of a stock purchase agreement because the plaintiff could not establish that the supposed mutual mistake factually existed).

In this case, Petitioner's underwriter originally calculated the borrower's base income as $3,675 per month, which resulted in a debt-to-income ratio low enough to satisfy FHA eligibility requirements. *Pet'r. Ex. A.* QAD determined on April 3, 2013 that the borrower's base income was actually $3,500 per month, resulting in a higher debt-to-income ratio that would not have met

FHA eligibility requirements. *Sec'y. Stat., Ex. A, Porter Decl.*, Ex. A. Petitioner agreed, as previously noted, that QAD's assessment at that time was accurate. Generally, when both parties are mistaken as to an essential element of the contract, and they had no intent to take risk on that element, a mutual mistake may exist. But, in this case, both HUD and Petitioner signed the *Agreement* with the mutual understanding that the borrower's income had been overstated and that such an error materially affected HUD's decision to insure the loan.

Since the modification of a written agreement is an extraordinary step, any party seeking reformation must prove the existence of a mutual mistake of expression by "clear and convincing evidence." Kansas v. Nebraska, 135 S. Ct. 1042, 1071 (2015) (finding that where parties knew what the agreement was and expressly agreed to it, the mistake was not in the writing of the agreement, but in the party's thinking, and therefore the contract was not eligible for reformation). The mistake must be true and not just an error in judgment, and it must go to the very heart of the agreement.

Here, Petitioner maintains that although QAD properly calculated the borrower's base income at $3,500, the borrower was also earning approximately $336.12 per month in overtime pay that should have been included in the calculation of the borrower's total income figure. *Pet'r. Stat.* ¶ 2; *Pet'r. Ex. A.* To establish overtime pay, Petitioner submitted supporting documentation based on the computations the underwriter should have made if the income and expenses had been properly calculated. This amount, according to Petitioner, included two of the borrower's paystubs, her W-2s from 2009 and 2010, and a re-calculation of the borrower's income that included computation of $336.12 in average overtime pay. *Pet'r. Ex. A.*

Petitioner states further that one of the paystubs, dated March 16, 2011, shows that the borrower received regular salary in the amount of $1,615.38 for the preceding two-week pay period. Id. The other paystub, dated March 2, 2011, reflects receipt of $484.62 in overtime pay along with a handwritten notation, "rec'd night classes as O/T." Id. According to Petitioner, the borrower's W-2s indicated she regularly received overtime pay, as her total earnings exceeded her base salary. Id. Because HUD's underwriting guidelines permit inclusion of overtime pay in total income, and because the March 2, 2011 paystub showing overtime pay was included in the original underwriting package for the Parent loan, Petitioner claims that overtime pay was properly included in the borrower's total income. *Pet'r. Stat.* ¶¶ 2-3; *Pet'r. Ex. A, B.*

After reviewing HUD's underwriting guidelines, the Court acknowledges the accuracy of Petitioner's assertion that HUD's underwriting guidelines permit inclusion of overtime pay in total income. See HUD Mortgagee Letter 95-7 § II (excerpted in *Pet'r. Ex. A*). To do so however requires meeting certain criteria. Such overtime pay is includable only "where the lender determines that there are reasonable prospects of its continuance." Id. HUD's guidelines further advise that the underwriter, "[a]s always," must establish and analyze the borrower's earnings trend and "must adequately document the file and justify his or her reasons for using the [overtime] income for qualifying purposes." Id. So, for the purpose of determining enforceability of the subject debt, Petitioner must produce evidence that sufficiently substantiates that the borrower consistently received overtime pay for at least two full years in order to include the overtime compensation in the borrower's total income.

In this case, while the March 2, 2011 paystub submitted by Petitioner reflects the borrower's receipt of overtime pay during that one pay period in question, the record of this proceeding lacks further evidence of overtime pay over a continued period of two years. Even though the original loan file purportedly included a copy of this single paystub, there is no reflection in the record that Petitioner's underwriter considered supplementing the borrower's base income with separate overtime pay or considered deciding the "reasonable prospects of ... continuance" of such overtime pay.

When QAD reviewed the Parent loan in April 2013, Petitioner failed to produce, at that time, a copy of the paystub in question. Petitioner then provided only two paystubs dated March 2 and March 16, 2011 respectively, each of which listed a regular salary in the amount of $1,615.38 with no visible inclusion of overtime pay. *Sec'y. Stat.* ¶ 15; see *Sec'y. Ex. B.* The March 16, 2011 paystub contained a handwritten notation, "gross includes night classes," that is inconsistent with Petitioner's contention that the borrower received separate overtime pay for night classes. *Sec'y. Stat.* ¶ 20; *Sec'y. Ex. B.*[3] So, when QAD conducted its review, the file offered into evidence by Petitioner was void of documentation that sufficiently supported consistent overtime pay and merely suggested that pay for night classes had been incorporated into the borrower's gross income.

While the underwriter's understatement of the borrower's income is at the heart of the *Agreement* and materially affects the operation of the contract, the *Agreement* cannot now be deemed void based on mutual mistake. The mistaken party, herein Petitioner, needed to show by clear and convincing evidence that the understanding of the parties when they signed the *Agreement* was that the underwriter actually understated the income instead of overstating the income. The evidence proffered by Petitioner falls short of the clear and convincing standard of proof necessary to prove that both parties to the *Agreement* were mutually mistaken regarding the underwriter's overstatement of the borrower's income.

Moreover, upon receiving notice in December 2017 that HUD intended to seek collection under the *Agreement*, Petitioner—for the first time—sent QAD an explanation letter and supporting documentation to now explain why the borrower's overtime pay should have been separately added to the borrower's total income. *Ex. A, Porter Decl.* ¶ 9, Ex. F. As a courtesy, the QAD Director, Andy DiPietro, reviewed these materials. Id. In a series of email exchanges with Petitioner, Mr. DiPietro opined that indemnification was warranted and that the *Agreement* should not be voided because "[t]here was no 2-year history of overtime in the [Parent loan] file that would support the lender's assertion that overtime be used." *Ex. A, Porter Decl.*, Ex. F at 5. Mr. DiPietro explained that, at the time the loan was underwritten, the borrower had been working for her current employer for less than two years. Id. He further noted that Petitioner had provided no evidence of overtime pay other than the single paystub from March 2, 2011 showing 24 hours' worth of overtime with a blank "Year to Date" column, and he remarked that the notation "rec'd night classes as O/T" on this paystub was contradicted by the other notation in the file indicating that the borrower's "gross [income] includes night classes." Id. at 3, 5.

[3] By contrast, the copy of the March 16, 2011 paystub submitted by Petitioner does not contain this notation. *Pet'r.. Ex. A.* Although the reason for the discrepancy is unclear, Petitioner does not dispute the Secretary's contention that the notation was added by Petitioner's underwriter, and the handwriting appears to match a calculation jotted in the margin of the paystub showing the underwriter's original computation of income. *Sec'y. Stat.* ¶ 20; *Sec'y. Ex. B.*

The Court finds Mr. DiPietro's assessment of the Parent loan to be accurate. Continuance of overtime pay for a two-year period is a pivotal issue in this case. The evidence presented by Petitioner falls short as proof that a two-year history of overtime was in existence to such a degree that it supplemented the borrower's income with overtime pay pursuant to Mortgagee Letter 95-7 § II. The underwriter did not understate the borrower's income by failing to account for overtime. Instead, when the parties executed the *Agreement*, they understood that the borrower's income had been overstated. There is no evidence in the record to suggest otherwise, particularly on the date of the execution of the *Agreement*. But there is evidence of subsequent communications between the parties that their understanding was that the underwriter overstated the income of the borrower. Therefore, the Court rejects Petitioner's argument that the parties were mistaken in their belief that the loan did not meet FHA guidelines upon execution of the *Agreement*.

II. Petitioner failed to prove that the Indemnification Agreement should be rescinded due to mistake.

Even if Petitioner had established that the parties misunderstood that the Parent loan met the eligibility requirements for FHA insurance upon execution of the *Agreement*, Petitioner has not convinced the Court that rescission of the *Agreement* is warranted in this case due to mistake.

The National Housing Act provides that the Secretary may require a Direct Endorsement mortgagee such as Petitioner to provide indemnification if the Secretary determines that the mortgagee violated FHA requirements when originating a mortgage. 12 U.S.C. § 1715z-21(c)(1); see also HUD Handbook 4155.2 § 2.C.2.a. In fact, "[f]inancial institutions doing business with HUD often elect to enter into indemnification agreements with the Department in lieu of having allegations of non-compliant lending activities referred to the Department's Mortgagee Review Board" for potential imposition of administrative sanctions. HomeOwners Mortgage of Am., Inc., No. 09-H-NY-KK28, 2010 HUD Appeals LEXIS 6, at *28 (HUDOA Mar. 31, 2010). An indemnification agreement between HUD and a mortgage lender is a basic contract. Associated Mortgage Bankers, HUDOA No. 15-VH-0026-AO-009, slip op. at 4 (Dec. 16, 2016). In general, rescission of a contract is an equitable remedy available when the parties make a mutual mistake as to a basic assumption underlying the contract, unless the adversely affected party bears the risk of the mistake. See Rest. (2d) Contracts § 152.

In Crest Mortgage Company, an FHA-approved lender attempted to avoid liability under an indemnification agreement by arguing, as the Petitioner has argued in this case, that "there was no real deficiency that impacted the legitimacy and/or performance of the loan." No. 04-A-CH-EE021, 2004 HUD Appeals LEXIS 78, at *8 (HUDBCA Oct. 29, 2004). However, an administrative judge found that HUD had reasonably determined it had been exposed to an unacceptable level of risk because the lender had underwritten loans without the proper documentation required by HUD. Id. at 9. The judge noted that the lender had not refuted the evidence of these deficiencies. Id. "To the contrary, [the lender's] August 28, 2002 letter conceded the deficient work of its underwriter ... and executed the indemnification agreement without objection," the judge stated. Id. Accordingly, the judge deemed the indemnification agreement to be enforceable against the lender. Id.

Likewise, in this case, Petitioner has failed to establish an entitlement to the equitable remedy of rescission of the *Agreement* despite Petitioner's argument that the underlying loan was not deficient. Whether the calculations in question overstated or understated the borrower's income, it is evident that Petitioner, through its underwriter, improperly calculated the borrower's income and child support debt when underwriting the Parent loan. QAD further found that Petitioner had failed to properly document these calculations and failed to conform to FHA underwriting requirements when underwriting the loan. QAD reasonably determined that Petitioner's non-compliant lending activities exposed HUD to an unacceptable level of risk. As a result, and consistent with the provisions of the National Housing Act, Petitioner agreed to indemnify HUD for any losses related to the loan in July 2013.

Five years later, after executing the *Agreement*, Petitioner discovered a paystub in the Parent loan file that purported to show that the borrower's income was understated, not overstated – a discovery that obviously contradicts the findings reported earlier by QAD, yet previously agreed to by Petitioner. Now that Petitioner so claims to have a better understanding of the terms of the *Agreement*, Petitioner's assertion is that the previous execution of the contract between the parties was a mistake and that rescission of the *Agreement* is warranted due to the mistaken understanding about the underwriter's error. A party's carelessness in signing a contract does not refute his mutual assent because of the well-established presumption that a party has *read and understood* the terms he has manifested assent to, as well as the objective standard in determining manifestation of assent. (Emphasis added.) See Morales v. Sun Constructors, Inc., 541 F.3d 218 (3d Cir. 2008) (holding that an employee was bound to an arbitration clause in his employment contract even though he did not read or understand the provision, because it was the employee's obligation to ensure he understood the agreement before signing. Further, the employee did not question the agreement for one year until his employer terminated him).

Even though Petitioner had every reason to review its underwriter's calculations when notified of QAD's findings in 2013, the record shows Petitioner instead delayed such review and discovery of this alleged miscalculation until now to present before this Court as a basis for rescission. Petitioner failed to take the necessary and reasonable steps that routinely are expected to be taken before signing a contract. Instead, Petitioner willingly entered into and signed an *Agreement* that Petitioner agreed reflected accurately the findings of the QAD, and then mailed to HUD a letter that expressly agreed with QAD's findings and the measures Petitioner intended to execute in compliance with QAD's recommendations.

If a party has objectively expressed assent to the bargain, his differing personal understanding of the terms or secret intent not to be bound does not release him from liability absent mutual mistake. Hotchkiss v. Nat'l City Bank, 200 F. 287 (S.D.N.Y. 1911). Since mutual mistake was not successfully established in this case, Petitioner may not now retract his assent after objectively agreeing to the terms simply because the party alleging mistake did not thoroughly read the terms of the agreement and now regrets the agreement. This means that, upon execution, QAD's findings were accurate because the underwriter overstated the income, and now Petitioner must show that their belief was false, and the underwriter factually did not overstate. The underwriter had exclusive possession of the documentation that reflected the discrepancy and more than enough time to discover the error and to bring it to HUD's attention in a timely manner as previously noted. Therefore, based upon the evidence presented, Petitioner has failed to

persuade this Court that the extraordinary step of rescinding the *Agreement* is warranted in the case at hand as a necessary and equitable measure.

III. Petitioner is contractually obligated to pay the subject debt pursuant to the Indemnification Agreement.

Petitioner signed the *Agreement* on July 10, 2013, and the contract was subsequently signed by HUD on July 25, 2013. The contract states that Petitioner "agrees to indemnify HUD for losses which have been or may be incurred related to the following FHA Case Number, 061-4041432 [the Parent loan], which is in default, or will go into default, through and up to five years from each [sic] loan's date of endorsement." *Pet'r. Ex. C.* As of July 2013, the Parent loan had already gone into default less than five years after its date of endorsement for FHA insurance. In fact, the borrower had defaulted less than five months after endorsement. See *Ex. A, Porter Decl.* ¶ 5, Ex. D. Accordingly, pursuant to the *Agreement*, Petitioner defaulted within the allotted five-year period and thus owes HUD for the losses related to the Parent loan.

Paragraph (c) of the *Agreement* specifies that "[w]here a HUD/FHA insurance claim has been paid in full and the property has been sold by HUD to a third party, the amount of indemnification is HUD's Investment as defined in paragraph (a), minus the sales price of the property to be paid in accordance with the terms of an invoice or bill [HUD] sends to [Petitioner]." *Pet'r. Ex. C.* Paragraph (a) of the *Agreement* states, in pertinent part:

> HUD's Investment includes, but is not limited to: the full amount of the insurance claim actually paid, all taxes and assessments paid or payable by HUD, all maintenance and operating expenses paid or payable by HUD (including costs of rehabilitation and preservation), loss mitigation, prorated losses from and expenses associated with the sale of a note, reasonable penalties for failure to pay amounts owed within the timeframe established on HUD invoices, interest on the amount owed at 5% per annum calculated from the date of the first bill, all sales expenses and any other expenses HUD may incur in connection with its claim disposition programs regarding FHA insured mortgages.

Id.

In this case, HUD incurred losses when it issued a payment for FHA insurance benefits totaling $175,841.33 to the then-current holder of the Parent loan, Wells Fargo, in June 2014 and July 2017 in exchange for conveyance of the subject property. HUD incurred further losses when it paid maintenance, operation, and sales expenses on the property. HUD then sold the property to a third party in May 2017, only to recoup a portion of its losses. See *Ex. A, Porter Decl.* ¶¶ 4-6, Exs. D & E. The *Agreement* is a valid and enforceable contract. Pursuant to paragraphs (a) and (c) of the same, Petitioner remains obligated to pay the balance of HUD's losses, which herein amounts to $109,479.71. *Sec'y. Stat., Ex. A, Porter Decl.*, Ex. E. Therefore, pursuant to terms of this contract, the Court finds that Petitioner owes HUD the subject debt in the amount of $109,479.71.

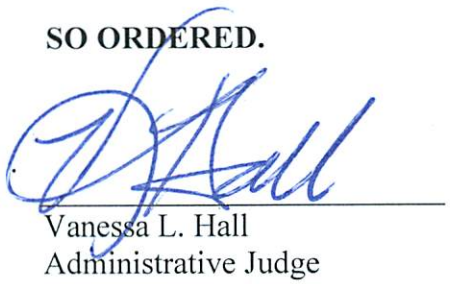
ORDER

Based on the foregoing, Petitioner remains contractually obligated to pay the subject debt in the amount so claimed by the Secretary.

The *Order* imposing the stay of referral on January 4, 2018 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.