

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

In the Matter of:

Jiaba Kennedy,

Petitioner.

18-VH-0090-AO-027

7-210119870A

April 1, 2019

DECISION AND ORDER

This proceeding is before the Office of Hearings and Appeals upon a *Hearing Request* filed on January 8, 2018, by Petitioner Jiaba Kennedy ("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 January 8, 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. On January 26, 2018, Petitioner filed her *Statement* and additional documentary evidence in support of her position. On March 22, 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.

On or about August 6, 2014, Jiaba Kennedy ("Petitioner") executed and delivered to the Secretary a Partial Claims Promissory Note ("Note") in the amount of \$10,917.14. *Secretary's*

Statement (Sec'y. Stat.), ¶ 2, Ex. 1. HUD holds a valid claim against the Petitioner. Sec'y. Stat., Ex. 2, Declaration of Brian Dillon (Dillon Decl.),¹ ¶ 3.

As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA insured first mortgage lender; and in exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Sec'y. Stat., ¶ 3; Ex. 2, Dillon Decl., ¶ 4.* By terms of the Note, the amount to be repaid thereunder becomes due and payable when the first of the following events occurs (3)(A)[o]n April 1, 2044 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, 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, ¶ 3; Ex. 2, Dillon Decl., ¶ 5.*

On or about April 27, 2017, 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. 2, Dillon Decl., ¶ 4.* Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec'y. Stat., ¶ 6; Ex. 2, Dillon Decl. ¶ 5.*

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings dated May 10, 2017, was mailed to Petitioner at his last-known address. *Sec'y. Stat., ¶ 8, Ex. 2, Dillon Decl., ¶ 6.*

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

- a. \$10,067.13 as the total unpaid principal balance as of February 28, 2018;
- b. \$33.56 as the unpaid interest on the principal balance at 1% per annum through February 28, 2018;
- c. \$606.04 as the unpaid penalties through February 28, 2018;
- d. \$35.33 as the unpaid administrative costs through February 28, 2018; and
- e. interest on said principal balance from March 1, 2018 at 1% per annum until paid.

Sec'y. Stat., ¶ 7; Ex. 2, Dillon Decl., ¶ 5.

The Secretary respectfully requests a finding that the 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 Government may proceed with Administrative Offset against Petitioner.

Sec'y. Stat. at ¶ 9; Ex. A, Dillon Decl. ¶ 5.

DISCUSSION

Petitioner does not deny that she owes the subject debt so claimed by the Secretary. Instead, Petitioner claims that:

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

I closed on my property in April 27, 2017. It was my understanding that the Title companies are suppose[d] to do the research on my mortgage companies and make all payments to the people I owe before giving me any money that is left over. Recently I found out that I owe HUD over \$10,075.13. Title Smart the title company that did the research is now claiming that when they did their research they did not find any document stating that I owed HUD. So payments were only made to Wells Fargo Bank.

Petitioner's Statement, filed January 26, 2018.

Petitioner also claims financial hardship as she states, "I work one job as a single mother making only \$13 per hour to support my family and cannot afford a lawyer to fight this issue for me." She further claims, "They [Title Smart] are telling me I need a lawyer which I cannot afford. Can someone please help me? I cannot afford for my wages to be garnished and I cannot afford the \$10,075.13." *Hearing Request; Petitioner's Statement*.

As support, Petitioner offered into evidence copies of email communications between Petitioner and TitleSmart Company; *Settlement Documentation*; *Closing Disclosure Statement*; and a *Release of Lien* letter from Anderson Law Office. *Hearing Request*, Attachments.

The Court is not convinced that the evidence offered by Petitioner meets 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 the terms of payoff statements from the primary lender. Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007). After a careful examination of the documentary evidence submitted, the Court has determined that Petitioner's documentation is insufficient and fails to support her claim that the subject debt is unenforceable because of a payment made to Wells Fargo Bank in the amount of \$104,485.58. For Petitioner not to be held liable for the full amount of 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). Neither occurred in this case.

The Court also notes that, according to the Secretary, "Petitioner provided a copy of a Wells Fargo Home Mortgage Settlement Statement dated April 27, 2017, from the sale of her home. While the Settlement Statement indicates that Petitioner received \$50,621.00 from the sale proceeds, there is no indication that HUD was paid the outstanding balance owed pursuant to the Note. *Sec'y's Stat.*, ¶ 8, Ex. 2. Upon further review of the Closing Disclosure Statement from TitleSmart, the debts owed by Petitioner, as identified in that Statement, did not include the amount due to HUD as so alleged by the Secretary. Petitioner contends, "It was my understanding the all Ti[t]le Company do their home work on who I owed money to before making any payout to me the Seller. I do not believe that it was my job as the seller to make those inquires." **But**, on the contrary, the onus falls on Petitioner, not on TitleSmart, Home Title, or Wells Fargo Bank, to ensure that the subject debt was verified as a debt to be paid in full.

Petitioner herein has failed to produce evidence of a written release from HUD that effectively discharged Petitioner from the debt associated with the Subordinate Note. This Court has consistently maintained 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). Accordingly, the Court finds, consistent with case law precedent, that the subject debt remains past due and enforceable because Petitioner lacks sufficient and credible proof to prove otherwise.

As a final point, Petitioner, through counsel, alleged that collection of the subject debt "will cause an undue hardship." *Petitioner's Statement*. Case law precedent has been established that maintains "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 as a defense herein because the debt owed by Petitioner is sought to be collected by means of administrative offset.

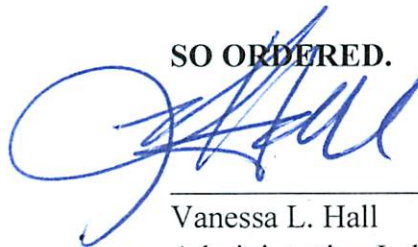
ORDER

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.



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.