

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

In the Matter of:

Mary E. Thomas-Proud,

Petitioner.

15-AM-0044-AG-014

2012303617A

May 31, 2017

DECISION AND ORDER

On October 3, 2011, Mary E. Thomas-Proud (“Petitioner”) was notified that pursuant to 31 U.S.C. §§ 3720A and 5. U.S.C. 5514, the Secretary of the U.S. Department of Housing and Urban Development (“HUD or “the Secretary”) intended to seek treasury offset of any federal payments due to Petitioner to satisfy Petitioner’s alleged debt to HUD. On April 27, 2012, HUD referred Petitioner’s debt to Treasury for collection. On August 2, 2012, Petitioner entered into a repayment agreement with Treasury.

On February 24, 2015, Petitioner requested a hearing concerning a proposed repayment schedule incident to a wage garnishment order sought by the Secretary relating to a debt owed to the U.S. Department of Housing and Urban Development (“HUD”). The Office of Hearing and Appeals has been designated to determine whether the debt is legally enforceable. 24 C.F.R. § 17.69(c). Because of Petitioner’s hearing request, referral of the debt to the U.S. Department of the Treasury offset was temporarily stayed by the Court on March 13, 2015, until the issuance of this written decision by the Administrative Judge. (Notice of Docketing, Order and Stay of Referral (“Notice of Docketing”), dated March 13, 2015). HUD was required to suspend the withholding order beginning on the 61st day after receipt of the hearing request because HUD had previously issued a withholding order to the debtor’s employer. 31 C.F.R. § 285.11 (f)(10)(ii); *Petitioner’s Statement that Debt Repayment Has Been Fulfilled* (“Petitioner’s Statement”) ¶ 10.

Background

On April 27, 2012, this Court held that Petitioner’s debt stemming from a Subordinated Note executed on February 11, 2004, in favor of the Secretary was past due and legally enforceable. Mary Thomas-Proud, HUDOA NO. 12-H-NY-PP08 (April 27, 2012). On August 2, 2012, Petitioner entered into a repayment agreement with the treasury. (Secretary’s Statement (“Sec’y Stat.”)) ¶ 5; See Payment Agreement “Attachment A” attached to the Supplemental Declaration of Brian Dillon (“Dillon Decl.”) as Exhibit A. The Payment Agreement shows that as of August 2, 2012, the sum of the principal, interest, penalties and HUD’s administrative costs

(the first four columns of the Payment Agreement) totaled \$9,820.86. (Sec'y Stat., ¶ 6). The Payment Agreement, however, also includes an additional 2,946.26 in Treasury fees.¹ Accordingly, Petitioner agreed to pay Treasury \$12,767.06 in the Payment Agreement. (Sec'y Stat., ¶ 7; Supp. Dillon Decl. at ¶ 4). Between August 2012 and May 2014, Petitioner made 20 payments of \$237 each for a total of \$4,740 towards her indebtedness. In addition, Petitioner's 2012 federal tax return in the amount of \$2,150 was offset and applied towards Petitioner's debt on March 21, 2013. (Supp. Dillon Decl. at ¶¶ 5 & 6).

After May 2014, Petitioner stopped making payments pursuant to the Payment Agreement. Treasury reinstituted administrative wage garnishment in July 2014. *Id.* at ¶¶ 4 & 7. According to HUD's Case Reconstruction Report, Petitioner's outstanding indebtedness as of April 30, 2016, is \$5,135.49. *Id.* at ¶ 4.

Discussion

Petitioner contends that the total amount of her indebtedness under the Subordinated Note was \$7,610.12. *Email Correspondence From Petitioner* (September 22, 2014) ("Petitioner's Ex. A"). Petitioner is correct in that this amount represents the principal owed under the Payment Agreement, but it does not include the added interest, penalties, HUD's administrative costs and Treasury fees. When those amounts are added to the principal, Petitioner's total indebtedness equals \$12,767.07. (Sec'y Stat. ¶ 7; Supp. Dillon Decl. at ¶ 4). This accurately reflects the total amount to be paid indicated on the Payment Agreement Petitioner agreed to and provided. Petitioner alleges that the accrued interest on the principal debt was waived as part of the repayment agreement. (Petitioner's Statement ¶ 7). The \$12,767.07 amount which Petitioner agreed to repay in the Payment Agreement indicates that the interest was not waived as she alleges. Further, there has been no documentary evidence provided by Petitioner supporting this allegation that the interest was waived.

Petitioner also contends that she has satisfied her debt by making payments totaling \$8,269 as of September 22, 2014. Based on the evidence provided, Petitioner has not satisfied her debt. Between August 2012 and May 2014 Petitioner has made 20 payments of \$237 each for a total of \$4,740 towards her indebtedness. In addition, the amount of Petitioner's 2012 federal tax return, in the amount of \$2,150 was offset and applied to Petitioner's debt in March 2013. (Sec'y Stat. ¶ 9; Supp. Dillon Decl. at ¶¶ 5 & 6). Petitioner alleged that a tax refund of \$3,055 was offset and applied as payment to the subject debt. (Supp. Dillon Decl. at ¶ 6). This offset is not reflected in HUD's Generic Debt Case Reconstruction Report (Ex. B, Dillon Decl.). Petitioner has not provided evidence proving this tax refund offset was applied to the subject debt.

Based on the evidence before the Court, the Secretary accurately stated that Petitioner is indebted to HUD for \$5,135.49 as of April 30, 2016. (Sec'y Stat. ¶ 12; Ex. B, Dillon Decl.). Petitioner defaulted on her repayment agreement after May 2014 and Treasury reinstated

¹ Treasury is authorized by the DCIA to assess an administrative fee of 30% of each payment made by debtors. The \$2,946.26 is 30% of \$9,820.86.

administrative wage garnishments in July 2014. (Sec'y Stat. ¶ 10; Supp. Dillon Decl. at ¶¶ 4 & 7). As of April 30, 2016, Petitioner has been credited with \$4,740 in payments between August 2012 and May 2014, a tax refund offset in the amount of \$2,150 and wage garnishments following her default on the repayment agreement. (Sec'y Stat. ¶¶ 9 & 10). These amounts paid are credited against the \$12,767.07 Petitioner agreed to pay under the Payment Agreement. The amount of indebtedness still remaining totals \$5,135.49 as of April 30, 2016. (Sec'y Stat. ¶ 12; Ex. B, Dillon Decl.). This is the amount reflected in HUD's Generic Debt Case Reconstruction Report and Petitioner has provided no evidence that this amount is incorrect.

Further, Petitioner was alerted in a May 30, 2012, correspondence from the closing company that executed the sale of her property that she was still liable to HUD on the Subordinate Note, "It is my understanding that HUD is saying that there are additional sums due. I have no control over that. If they simply made a mistake when they provided us with a payoff that does not excuse payment of those sums due by you, in my opinion." Petitioner was informed on May 30, 2012 that her liability on the Subordinate Note was not impacted by her lender's failure to include it in the payoff statement when the property was sold.

Without sufficient documentary evidence to refute or rebut the Secretary's position, Petitioner's claim that the amount of the alleged debt is non-existent must fail for lack of proof. This Court has consistently maintained that "assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or unenforceable." Troy Williams, HUDOA No. 09-M-CH0A WG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Therefore, the Court finds that Petitioner's claim challenging the existence and amount owed on the subject debt fails for lack of proof and, as a result, Petitioner remains legally obligated to pay the subject debt in the amount claimed by the Secretary.

ORDER

Based on the foregoing, the Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is **VACATED**. It is hereby

ORDERED that the Secretary is authorized to seek collection of this outstanding debt by means of administrative wage garnishment of any federal payment due Petitioner.

SO ORDERED,


H. Alexander Manuel
Administrative Judge