

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

In the Matter of:

Tammy Chance

Petitioner.

19-VH-0113-AO-039

7-210145690B

July 15, 2019

DECISION AND ORDER

This case is before the Office of Hearings and Appeals upon a *Request for Hearing* ("Hearing Request") filed by Tammy Chance ("Petitioner,") on May 20, 2019, 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

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 May 21, 2019, this 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. In addition to the evidence submitted by Petitioner with the *Hearing Request*, on June 30, 2019, Petitioner also filed a brief *Statement* in support of her position. On July 2, 2019, the Secretary filed his *Statement* and documentary evidence as support for his position. This case is now ripe for review.

FINDING OF FACTS

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.

In or about April, 2014, the HUD-insured primary mortgage on Petitioner's home was in default, and Petitioner was threatened with foreclosure. *Secretary's Statement (Sec'y. Stat.)*, Ex. A, *Declaration of Brian Dillon (Dillon Decl.)*,¹ ¶ 4.

To prevent the lender from foreclosing, HUD advanced funds to Petitioner's lender to bring the primary note current; and in exchange for such funds, Petitioner executed the Note in favor of the Secretary. *Id.* In exchange for foreclosure relief, on April 30, 2014, Petitioner executed a Subordinate Note ("Note") in the amount of \$32,290.46 in favor of the Secretary. *Sec'y. Stat.* ¶ 4, Ex. B, Note. Paragraph 4(a) of the Note cites specific events that make the debt become due and payable. One of those events is the payment in full of the primary note. *Sec'y. Stat.* ¶ 4, Ex. B, Note at ¶ 4(a)(i)(1)). On or about August 31, 2018, the FHA insurance on Petitioner's primary note was terminated when the primary lender notified the Secretary that the primary note was paid in full. *Sec'y. Stat.*, Ex. A, *Dillon Decl.*, ¶ 4; Ex. B, Note at ¶ 4(a)(i)(1) & (3)).

Upon payment in full of the primary note, Petitioner was to make payment to HUD on the Note at the "Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC 20410 or any such other place as [HUD] may designate in writing by notice to Borrower." *Sec'y. Stat.*, ¶ 7, Ex. A, *Dillon Decl.*, ¶ 4; Ex. B, Note at ¶ 4(b)(i). Petitioner failed to make payment on the Note at the place and in the amount as specified. As a result, Petitioner's debt to HUD is delinquent. *Sec'y. Stat.*, ¶ 8, Ex. B, Note; Ex. A, *Dillon Decl.*, ¶ 5.

The Secretary has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. *Sec'y. Stat.*, ¶ 9; Ex. A, *Dillon Decl.* ¶ 5. Therefore, as of June 30, 2019, Petitioner is justly indebted to the Secretary in the following amounts:

- (a) \$32,290.46 as the unpaid principal balance;
 - (b) \$107.60 as the unpaid interest on the principal balance at 1% per annum; and
 - (c) Interest on said principal balance from July 1, 2019 at 1% per annum until paid.
- (Id.)

A Notice of Intent to collect by Treasury Offset dated April 22, 2019, was mailed to Petitioner. *Sec'y. Stat.*, ¶ 10, Ex. A, *Dillon Decl.*, ¶ 6.

The Secretary respectfully requests a finding that the Petitioner's debt is past due and legally enforceable. *Sec'y. Stat.* at ¶ 9; Ex. A, *Dillon Decl.* ¶ 5.

DISCUSSION

Petitioner does not dispute the amount of the subject debt. Instead, Petitioner challenges the existence of the debt because she maintains that the subject debt is the responsibility of her former spouse pursuant to the terms of the divorce decree. Along with her *Hearing Request*, Petitioner offered

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

into evidence a copy of a *Final Decree of Divorce (Divorce Decree)* issued by the Circuit Court of Lee County, Alabama. *Hearing Request*, Attachment.

After reviewing Petitioner's documentary evidence, the Court has determined that the evidence submitted by Petitioner is insufficient as proof that the subject debt does not exist and is not enforceable. For Petitioner not to be held liable for the full amount of the debt, there must be either a release in writing from the former lender explicitly relieving Petitioner's obligation to HUD, "or valuable consideration accepted by the lender" indicating intent to release. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). No such evidence of release has been presented by Petitioner in this case.

The *Divorce Decree* indicated that the property associated with the subject debt will be sold. But in this case, the existence of the divorce decree or the terms therein do not dictate whether Petitioner is responsible for the subject debt. The *Divorce Decree* only determines the rights and liabilities between Petitioner and her former spouse, but not the rights and liabilities between Petitioner and third parties. Kimberly S. Kim. (Thiedel), HUDBCA No. 89-4587-L74 (April 23, 1990). Such a document purporting to release Petitioner from his joint-obligation under the *Divorce Decree* does not affect the claims of an existing creditor unless the creditor was a party to the action. Janet T. Rodocker, HUDBCA No. 00-A-CH-AA17 (May 22, 2000). While Petitioner may be divorced from her former spouse, neither the Secretary nor the lender was a party to that divorce action. So, in this case, Petitioner remains jointly and severally liable with her former spouse for repayment of the debt according to the terms of the *Note* and, consequently, the Secretary may proceed against her or her former spouse for the full amount of the debt. Jo Dean Wilson, HUDBCA No. 03-A-CH-AWG09 (Jan. 30, 2003).

As a recourse, Petitioner may seek to enforce, in the state or local court, the divorce decree that was granted to his former spouse so that Petitioner may recover from his former spouse monies paid by him to HUD in satisfaction of subject debt. See William Holland, HUDBCA No. 00-A-NY-AA83, dated Oct. 12, 2000; Michael York, HUDBCA No. 09-1-1-CH-AWG36 dated June 26, 2009, at 3. But, that course of action of course would be separate and distinct from this proceeding. Without proof of a written release from the subject debt directly from HUD, Petitioner remains contractually obligated to pay the subject debt as a co-signor on the *Note*.

Next, Petitioner contends, "I am financially unable to make payments back to HUD based on the fact I make only 17,000 a year and raise our three children. He is more financially stable than I am. I understand that my name was on the contracts but Walter has always been the main income in the marriage. Please take all this into consideration when making a decision." *Petitioner's Email* dated June 30, 2019. Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. Raymond Kovalski, HUDBCA No. 87-1681-G18 (December 8, 1986). The Court acknowledges Petitioner's financial circumstances, but, the law provides that "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).

Moreover, no regulation or statute currently exist that permits financial hardship to be considered as a basis for determining, in administrative offset cases, whether a debt is past-due and enforceable. Thus, consistent with case law precedent and statutory limitations, the Court

finds that financial hardship cannot be considered in Petitioner's case because the debt owed is sought by the Secretary to be collected by means of administrative offset.

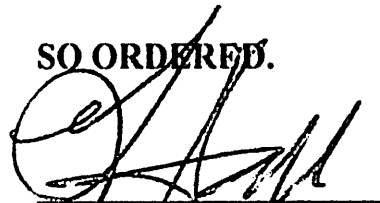
ORDER

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 of this matter to the U.S. Department of Treasury on May 21, 2019 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.