

In the Matter of:

Martha Nesser,

Petitioner

HUDBCA No. 02-C-NY-CC055

Claim Nos. 76-423961-9,

76-430226-8,

76-423960-1

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For the Secretary

DECISION AND ORDER

Petitioner was notified by a Due Process Notice that the Secretary of the U.S. Department of Housing and Urban Development (“HUD” or “Department”) intended to seek administrative offset of any Federal payments due to Petitioner in satisfaction of a delinquent and legally enforceable debt allegedly owed to HUD. Administrative offset is authorized by 31 U.S.C. § 3720A.

Petitioner has made a timely request for a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD. The Administrative Judges of this Board have been designated to conduct a hearing to determine whether the debt allegedly owed to HUD is legally enforceable. 24 C.F.R. § 17.152(c). As a result of Petitioner’s request, referral of the debt to the Internal Revenue Service (“IRS”) or to the U.S. Department of the Treasury for administrative offset was temporarily stayed by the Board.

Background

31 U.S.C. § 3720A provides Federal agencies with a remedy for the collection of debts owed to the United States Government. The Secretary has filed a Statement with

documentary evidence in support of his position that Petitioner is indebted to the Department in a specific amount.

It is undisputed that there were three defaulted home improvement loans executed by Petitioner and insured against non-payment by the Secretary which were assigned to the Secretary following default. (Exhs. A, B, C to Secretary's Statement, hereinafter "Secy. Stat.", Exh. C, Goodman Decl. dated October 30, 2002). The first is Claim No 76-423961-9, for a property improvement loan that originally went into default on March 30, 1980. However, Petitioner made 28 partial payments on that loan to HUD between July 21, 1983 and July 25, 1986, and an additional partial payment of \$25.00 on July 26, 1993. The Secretary has submitted a Title I Defaulted Loans Case Reconstruction Report dated August 27, 2002, which shows these payments. (West Supp. Decl., Exh. E). The second is Claim No. 76-430226-8, which went into default on September 1, 1979. After default, Petitioner made 29 partial payments to HUD on that debt between June 21, 1983 and July 25, 1986, and an additional partial payment of \$25.00 on July 29, 1993. Id., Exh. G. The third is Claim No. 76-423960-1, which went into default on January 25, 1980. After default, Petitioner made 28 partial payments to HUD on that debt between June 21, 1983 and July 25, 1986, and an additional partial payment of \$25.00 on July 29, 1993. Id., Exh. F. Petitioner does not dispute the accuracy of the Title I Defaulted Loans Case Reconstruction Report as to any of the above mentioned payments.

On August 1, 1994, HUD referred all three of Petitioner's defaulted loans to the U.S. Department of Justice for legal action. Id., Exh. H. On September 2, 1994, the United States filed suit against Petitioner in the United States District Court for the Western District of Pennsylvania, Civil Action No. 94-1498. Id., Petitioner's Exh. G. A Default and Judgment issued against Petitioner on November 16, 1994 (Id., Exh. H) was amended by an Order dated October 30, 1995, based on a Motion to Amend Judgment. The October 30, 1995 Order amended the judgment issued on November 16, 1994 in favor of the United States against Petitioner to read "for the amount of \$7,931.94 plus post judgment interest, costs (\$20.00) and the 10% surcharge in the amount of \$793.20." Id.

Discussion

The Secretary seeks amounts in excess of the judgment amount, apparently including pre-judgment interest that was not included in the judgment. Petitioner contends that the judgment sought to be enforced through this administrative action is invalid because more than six years passed between the last payments that Petitioner had made on each of the three home improvement loans in July 1986, and when the United States filed suit in 1994 against Petitioner. Although Petitioner concedes that she made a voluntary payment of \$25.00 on each of the debts on July 25 or July 29, 1993, Petitioner contends that the Government was obligated to bring its legal action in the U.S. District Court on Claim No. 76-423961-9 by May 25, 1993, and on Claim Nos. 76-430226-8 and 76-423961-0 by July 25, 1993, before Petitioner made the 1993 payments on the loans in accordance with 28 U.S.C. § 2415(a), a six-year Federal statute of limitations for actions for money damages brought by the United States. Petitioner believes that the 1993 payments on the loans did not revive the six-year statute of limitations because they

were made after six years had passed from the last payment made by Petitioner in 1986 on each of the defaulted loans.

Petitioner clearly acknowledged the three debts and indicated a willingness to pay them by her payment history between 1983 and 1986. The debts as causes of action were revived by those payments. Shurter v. Rickes, 62 F.2d 489 (5th Cir. 1932), cert. denied, 289 U.S. 732 (1932). As a general rule, the tendering of partial payment renews the statute of limitations on the date of each partial payment, so long as it is clear that the partial payments are intended as a new promise to repay a debt that has already become unenforceable by operation of a statute of limitations. United States v. Glen Falls Insurance Company, 546 F. Supp. 643, 645 (N.D.N.Y. 1982). The single \$25.00 payment made by Petitioner in 1993 on each of the three debts occurred more than six years after the last payment on any of the debts had been made, and there is no evidence that Petitioner had entered into a written repayment agreement with HUD in 1993, thus expressing a renewed willingness to repay the three debts. There is insufficient evidence on which to find that a single \$25.00 payment made in 1993 revived any of the three debts as a cause of action. Villa Smith Tate, HUDBCA No. 92-C-CH-P1076 (March 19, 1993). A debt can be novated by partial payments made by a debtor, 28 U.S.C. § 2415(a), but “not every partial payment of a debt is sufficient to start the statute of limitations running anew... rather, the circumstances of the debt must reflect the intent of the debtor to honor the debt.” United States v. Lorince, 773 F. Supp. 1082, 1087 (N.D. Ill. 1991). I do not find a renewed unequivocal promise to repay this debt by Petitioner based on the single payment made on each loan in 1993. see David Smith, HUDBCA No. 94-A-CH-R1239 (May 12, 1994); Arthur Schneid, HUDBCA No. 93-A-CH-P1299 (July 1, 1993).

With respect to the validity of the judgment against Petitioner entered by the United States District Court, this Board has no jurisdiction to modify, overturn, or disregard such a judgment. Because that judgment has not been vacated, set aside, or modified, it may be presently enforceable against Petitioner. The judgment creates a lien in favor of the United States for 20 years. 28 U.S.C. § 3201(c)(1). However, Petitioner rightly argues that the pertinent Federal statute applicable to collection of debts by offset provides that “no claim that has been outstanding for more than ten years may be collected by means of administrative offset.” 31 U.S.C. § 3716(c)(1); see Billy W. Page, HUDBCA No. 86-1344-F350 (Jan. 31, 1986); Gerrard v. U.S., 656 F. Supp. 570 (N.D. Cal. 1987); Grider v. Cavazos, 911 F.2d 1158 (5th Cir. 1990); 26 C.F.R. § 301.6402-6T(b)(2).

The Government’s Due Process Notice, which was sent to Petitioner and dated July 15, 2002, indicates, inter alia, that the date of default of the subject loan was March 30, 1980, a default which the Government admits occurred over twenty-three (23) years ago. Notwithstanding that fact, even if the Board reluctantly concluded that Petitioner’s three twenty-five (25) dollar payments in July of 1993 constituted credible and persuasive evidence of Petitioner’s renewed willingness to repay these defaulted loans, these debts would still remain uncollectable by means of administrative offset on or after July 25 and 29 of 2003 because the authority to offset within the applicable ten-year statute of

limitations has effectively expired. Sharon Dell, HUDBCA No. 90-4913-L436 (Feb. 7, 1990).

ORDER

While the United States Department of Justice, at the request of the Secretary, may seek to enforce its judgment against Petitioner, and while Petitioner may seek to open, set aside, modify, or vacate the extant judgment, this debt is legally unenforceable against Petitioner in the context of this proceeding because it has been outstanding for more than ten years and can no longer be collected by means of administrative offset as a matter of law.

The Order imposing the stay of referral of this matter to the IRS or to the U.S. Department of Treasury for administrative offset is hereby made permanent. The Secretary is not authorized to seek collection of this outstanding obligation by means of administrative offset of any eligible Federal payments due to Petitioner.

Jerome Drummond
Administrative Judge

July 18, 2003