



**Office of Appeals
U.S. Department of Housing and Urban Development
Washington, D.C. 20410-0001**

In the Matter of:

BRIAN C. LYNCH aka BRIAN LYNCH,

Petitioner

HUDOA No. 10-M-CH-LL147
Claim No. 721004633-OA

Brian C. Lynch aka Brian Lynch
20161 La Hwy 16
Denham Springs, LA 70726

Pro se

Carol S. Turner, Esq.
U.S. Department of Housing and
Urban Development
Office of Assistant General Counsel
For Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

For the Secretary

DECISION AND ORDER

Petitioner was notified that, pursuant to 31 U.S.C. §§ 3716 and 3720A, the Secretary of the U.S. Department of Housing and Urban Development ("HUD") 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.

On June 22, 2010, Petitioner made a request for a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD in this case. The Office of Appeals has 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 hearing request, referral of the debt to the U.S. Department of the Treasury for administrative offset was temporarily stayed by this Office on June 25, 2010, until the issuance of a written decision by the Administrative Judge. *See* 24 C.F.R. § 17.156.

Background

The Petitioner executed and delivered a Subordinate Note (“Subordinate Note”) dated April 29, 2003, in the amount of \$5,504.00, in exchange for foreclosure relief being granted by the Secretary. (Secretary’s Statement (“Sec’y Stat.”) dated July 16, 2010 ¶ 2, Ex. A; Dillon Decl., ¶ 4.) The Subordinate Note cites specific events that would cause the debt to become due and payable. (*Id.* at Ex. A. ¶ 4.) One of these triggering events was when the Petitioner paid all amounts due under the primary note insured by the Secretary. (Sec’y Stat. ¶ 4; Dillon Decl., ¶ 4.) On or about January 15, 2004 the FHA Insurance on the first mortgage was terminated, as the lender indicated the mortgage was paid in full. (Sec’y Stat. ¶ 5; Decl., ¶ 4.) Thus the Subordinate Note became due and payable in full at that time. (Sec’y Stat., ¶ 4, Ex. A ¶4(A)(i); Dillon Decl., ¶ 4.)

The Secretary has attempted to collect the amounts due under the Subordinate Note, but Petitioner remains delinquent. (Sec’y Stat., ¶ 6, Decl. ¶ 5.) The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in the following amounts:

- (a) \$5,504.00 as the unpaid principal balance as of June 30, 2010.
- (b) \$696.92 as the unpaid interest on the principal balance at 4% per annum through June 30, 2010, and
- (c) interest on said principal balance from July 1, 2010 at 4% per annum until paid.

(Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center (“Dillon Decl.”), dated July 13, 2010.

Discussion

31 U.S.C. §§ 3716 and 3720A authorize federal agencies to collect debts owed to the United States Government by means of administrative offset. The burden of proof is on the alleged debtor to show that the debt claimed by the Secretary is unenforceable or not past due. 24 C.F.R. § 17.152(b). Failure to provide documentary evidence to meet this burden shall result in a dismissal of the debtor’s request for review.

Petitioner wrote a letter stating his inability to pay the debt because of severe financial hardship and because he is totally disabled. (Petitioner’s Letter (“Pet’r Ltr.”), dated June 22, 2010. (Sec’y Stat., ¶ 8.) In support of his claim of disability, Petitioner attached to his letter dated June 22, 2010, a “Notice of Decision – Fully Favorable” from the Social Security Administration Office of Hearings and Appeals dated October 19, 2005.

This Office acknowledges Petitioner’s financial circumstances, but we have held that: “unfortunately, 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). 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). Furthermore, no regulation or statute currently exist that permits financial hardship to

be considered as a basis for determining whether a debt is past-due and enforceable in cases involving debt collection by means of administrative offset. Thus, consistent with case law precedent and statutory limitations, I find that financial hardship cannot be considered as a defense in this case as the debt owed by Petitioner is sought to be collected by means of administrative offset.

Petitioner also wrote a letter stating that "I do not believe I owe this as I believe it was discharged in a bankruptcy years ago in Knoxville, TN." (Petitioner's Letter ("Pet'r Ltr."), filed October 25, 2010. The Secretary stated "Petitioner filed chapter 7 bankruptcy on October 9, 2001, bankruptcy case number 01-34927, which was discharged on January 17, 2002. However, the bankruptcy was filed and completed prior to the date of the April 29, 2003 loan." (Sec'y Stat., ¶ 12 and Ex. C; Dillon Decl., ¶ 7.)

On three separate occasions, this Office ordered Petitioner to file documentary evidence to prove that the debt in this case is not enforceable or not past due. (Notice of Docketing, Order and Stay of Referral, dated June 25, 2010; Order ("Order"), dated July 20, 2010; Order ("Order"), dated October 26, 2010.) The October 26, 2010 Order specifically stated, "Petitioner MUST file proof of bankruptcy consisting of the Order Discharging Debt by the U.S. Bankruptcy Court and the creditor schedule listing, specifically, the alleged debt to HUD in this case," and "Failure to comply with this Order shall result in a decision based upon the documents in the record of this proceeding." To date, Petitioner has failed to comply with the three Orders issued by this Office. As a result, Petitioner has not met his burden to prove that the debt in this case is not past due or legally enforceable, or non-existent due to discharge of bankruptcy. Thus, this Office finds that Petitioner's claim of debt discharged by bankruptcy fails for lack of proof.

In the absence of documentary evidence to support Petitioner's position, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner as set forth in the Notice of Intent to Collect by Treasury Offset.

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be legally enforceable against Petitioner in the amount claimed by the Secretary. The Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative offset is **VACATED**. It is

ORDERED that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative offset of any federal payment due Petitioner.



H. Alexander Manuel
Administrative Judge

January 24, 2011