



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

In the Matter of:

Marinela Villejo,

Petitioner

HUDOA No. 11-M-CH-LL24
Claim No. 7-210068280A

Marinela Villejo
1142 N Knollwood Drive
Palatine, IL 60067

Pro se

Sara Mooney, 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

On or about February 28, 2011, 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 or about March 22, 2011 Petitioner filed a request for hearing, dated March 13, 2011, concerning the existence, amount, or enforceability of the debt allegedly owed to HUD in this case. (Hr’g Req., filed March 22, 2011.) 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 March 24, 2011, until the issuance of a written decision by the Administrative Judge. *See* 24 C.F.R. § 17.156. (Notice of Docketing, Order, and Stay of Referral, dated March 24, 2011.)

Background

On or about September 1, 2003, HUD provided foreclosure relief to Petitioner by advancing funds to Petitioner's FHA-insured lender in order to bring Petitioner's mortgage current. (Secretary's Statement ("Sec'y Stat.") ¶ 1, filed April 7, 2011; Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl.") ¶ 4, dated April 1, 2011.) As evidence of the loan, Petitioner executed a Subordinate Note ("Note") in the amount of \$8,560.09. (Sec'y Stat. ¶ 1, Ex. 1; Dillon Decl. ¶ 4.) Under the terms of the Note, the debt became due and payable when Petitioner paid the primary FHA-insured loan in full. (Sec'y Stat. ¶ 2; Dillon Decl. ¶ 4.) On or about October 30, 2009, the FHA mortgage insurance on the primary mortgage was terminated as the lender indicated that the FHA-insured loan had been paid in full. (Sec'y Stat. ¶ 3; Dillon Decl. ¶ 4.)

HUD has attempted to collect the amount due under the Note but Petitioner remains delinquent. (Sec'y Stat. ¶ 4; Dillon Decl. ¶ 5.) The Secretary alleges that Petitioner is indebted on the claim in the following amounts:

- (a) \$8,560.09 as the unpaid principal balance as of March 31, 2011;
- (b) \$28.52 as the unpaid interest on the principal balance at 1% per annum through March 31, 2011; and
- (c) interest on said principal balance from April 1, 2011 at 1% per annum until paid.

(Sec'y Stat. ¶ 5; Dillon Decl. ¶ 5.) A Notice of Intent to Collect by Treasury Offset, dated February 28, 2011, was sent to Petitioner. (Sec'y Stat. ¶ 6; Dillon Decl. ¶ 6.)

Discussion

Petitioner initially contested her liability on the Note, stating that, "I did refinance in October 2009 but I have all my paperwork and [sic] from the mortgage company, I have paid any outstanding loans/balances." (Hr'g Req.) However, in a letter dated May 31, 2011, Petitioner acknowledged that she did not repay the debt, stating:

I did not fully understand the Subordinate Note dated 2003 and subsequently filed for foreclosure in 2005. During the foreclosure, I understood that my outstanding debt was added to the principal amount of my loan. I refinanced in 2009 and was not intuitive enough to realize this debt had to be repaid.

(Pet'r's Letter, filed Aug. 8, 2011.) Petitioner's letter further stated that she is unable to pay the full amount due under the Note because she is currently unemployed. (*Id.*) As a result, Petitioner proposes a repayment amount beginning on August 1, 2011 at \$500 per month, with progressing amounts until she secures full time employment. (*Id.*)

In response, the Secretary states that Petitioner failed to provide evidence that she paid the debt through a refinance of her home in October 2009. (Sec'y Stat. ¶ 7.)

This Court finds that Petitioner has not provided any evidence to support her initial argument that she "paid any outstanding loans/balances." (Hr'g Req.) While Petitioner indicated in her hearing request that she "has all [the] paperwork," she has not provided this Court with any documentary evidence to support her statement that the 2009 refinance satisfied her obligation on the Note. (Hr'g Req.) In order for Petitioner to avoid liability for the debt, there must either be a release, in writing, from the lender specifically discharging Petitioner's obligation, or valuable consideration paid to HUD, or to its designee, that would indicate an intent to release. *Jo Dean Wilson*, HUDBCA No. 03-A-CH-AWG09 (Jan. 30, 2003); *Cecil F. & Lucille Overby*, HUDBCA No. 87-1917-G250 (Dec. 22, 1986); *Jesus E. & Rita de los Santos*, HUDBCA No. 86-1255-F262 (Feb. 28, 1986). Petitioner has failed to file any evidence to establish the existence of a valid release. Therefore, absent evidence of a release in writing, I find that Petitioner is bound as a matter of fact and law by the terms of the Note and the Secretary's right to proceed against Petitioner to collect this outstanding obligation is unimpaired.

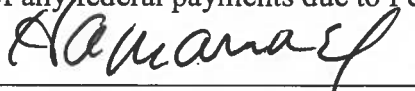
Petitioner's claim of financial hardship is also unavailing. This Office acknowledges Petitioner's financial circumstances, but unfortunately, "in administrative offset cases evidence of financial hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is 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 (Feb. 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 (Dec. 8, 1986). 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 has suggested an alternative repayment agreement. However, this Office is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department. Petitioner may wish to discuss this matter with either Counsel for the Secretary or Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-669-5152, extension 4206.

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



H. Alexander Manuel
Administrative Judge

September 8, 2011