
In the Matter of:	:	
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	:	HUDBCA No. 04-K-CH-EE018
Charles Snyder and	:	
	:	
Tammy Snyder,	:	
	:	
Petitioners	:	

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DECISION AND ORDER

Petitioners were notified by Due Process Notice that, pursuant to 31 U.S.C. § 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 Petitioners in satisfaction of a delinquent and legally enforceable debt allegedly owed to HUD. The claimed debt has resulted from a defaulted loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act. (12 U.S.C. § 1703).

Petitioners have 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 Petitioners' request, the Board temporarily stayed referral of the debt for offset.

Summary of Facts and Discussion

On May 23, 1993, Petitioners executed and delivered to Factory Home Center ("FHC") a retail installment contract to purchase a manufactured home for \$31,029.01 and insured against nonpayment under Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement, hereinafter "Secy. Stat.," ¶ 2). FHC then assigned the note that same day to Green Tree Financial Corporation ("GTFC"). (Secy. Stat. ¶ 2). Petitioners also executed a "Notice to Borrower of HUD Loan" which advised them that the loan was insured by HUD, that failure to repay the loan may lead to foreclosure and "that the value of [their] property at the time of foreclosure may be less than the unpaid balance on [their] loan, leaving [them] liable for the difference." (Secy. Stat., Declaration of Brian Dillon, hereinafter "Dillon Decl.," exh. A). Petitioners made their last payment during March of 1998, but they received no written release from the debt by GTFC. (Secy. Stat.).

On May 29, 1998, Petitioners executed a "Notice of Surrender of Secured Property" dated May 27, 1998 from GTFC. (Secy. Stat., Dillon Decl., exh. B). That notice stated:

I hereby voluntarily surrender the Secured Property and acknowledge that I understand my right to keep possession of the Secured Property until a Court has decided that I am in default. I further acknowledge that before making such a decision a Court would give me a reasonable opportunity for a hearing and that by surrendering the Secured Property to Green Tree Financial Servicing Corporation or its subsidiary, I waive my right to such a hearing. I further acknowledge that I have authority to surrender the Secured Property and that I have inspected it, and acknowledge that I have delivered only the Secured Property and nothing else. I relinquish all rights to title, ownership, and notification of any action and any other rights pertaining to ascertainable interest. (Secy. Stat., Dillon Decl., exh. B).

Petitioners returned the notice to GTFC. (Secy. Stat., Dillon Decl., exh. B). GTFC acknowledged receipt of the mobile home on June 11, 1998. (Secy. Stat., Dillon Decl., exh. B).

GTFC sent to each Petitioner a "Notice of Private Sale" dated August 18, 1998. (Secy. Stat., Dillon Decl., exh. C). Tammy Snyder signed the return receipt for her notice on August 21, 1998, but Charles Snyder did not sign the return receipt, which was

returned to GTFC marked “unclaimed.” (Secy. Stat., Dillon Decl., exh. C). The notices of private sale were identical except for the Petitioners’ names and stated that their mobile home would be sold at any time after ten days from the date of the notice, but gave them the opportunity to redeem the property before the sale. (Id.). The notices also advised Petitioners that “[t]he sale price might not cover your debt and expense. If that happens, you will owe us the difference, as permitted by law.” (Id.).

GTFC sold Petitioners’ mobile home for \$15,500.00 on October 22, 1998. (Secy Stat., Dillon Decl., exh. D). GTFC did not recover the full amount of the debt through the sale and assigned the note to the United States of America on January 7, 1999. (Secy. Stat., ¶ 3). HUD sent separate Due Process Notices to Petitioners in 1999. (Secy. Stat., Dillon Decl. ¶¶ 9 & 10). Debt Collection and Asset Management Systems records show that Tammy Snyder called the Financial Operations Center on June 1, 1999 to dispute the debt. (Secy. Stat., Dillon Decl., ¶ 10). The Department of Treasury notified Petitioner Charles Snyder on February 27, 2004 that it had offset a federal payment in the amount of \$915.12. Petitioners are in debt to HUD in the following amounts: \$13,963.90, unpaid principal balance as of March 30, 2004; \$3,629.19, unpaid interest on the principle balance at 5% per annum through March 30, 2004; and, interest on the principle balance from April 1, 2004 at 5% per annum until paid. (Secy. Stat., Dillon Decl., ¶ 4).

Petitioners have alleged that a GTFC employee informed them in a telephone conversation that they would be released from their debt. Petitioners contended that “[GTFC] told them that if they made their March 1998 payment, [GTFC] would consider it as final payment and would cancel the loan and take the mobile home.” (Petitioners’ Letter, March 16, 2004, hereinafter “Pet. Ltr.”). After receipt of the “Notice of Surrender of Secured Property,” Petitioners asserted that they called GTFC and were told that “once they received it back signed from [them] that they would issue out a letter of the agreement we made on the phone stating that the loan was dismissed and we were done.” (Petitioners’ Supplemental Statement, May 28, 2004). Finally, Petitioners claim “[w]e would have kept the mobile home if we knew that without our knowledge [GTFC] would say we were in default one month after our last payment ... and then 6 years later we find out through HUD that HUD had paid [GTFC] for a loss and was now holding what we had believed to be a cancelled loan.” (Pet. Ltr.)

While Petitioners may have acted in good faith, the law does not support their contention that the surrender of the mobile home relieved them of the obligation to repay the deficiency due following the sale of the mobile home. A written release is necessary to establish that a debtor is no longer liable for payment. Valerie L. Karpanai, HUDBCA No. 87-2518-H51at 2 (January 27, 1988). A written release “must be in writing or supported by sufficient valid or valuable consideration. Id., citing, 76 C.J.S. Release § 10 (1952). No such release of Petitioners’ debt by GTFC is in the record. Petitioners have submitted no documentary evidence that GTFC ever agreed in writing to release them from their debt in exchange for final payment and surrender of the mobile home.

Petitioners’ allegation that a GTFC employee orally promised to release them from the debt is insufficient to prove that the debt is unenforceable. The record does not support such a finding. GTFC sent Petitioners a “Notice of Surrender of Collateral” that

gave them no reason to believe that the debt had been settled. Moreover, at the time Petitioners executed the installment contract, they also executed a statement acknowledging their responsibility for the debt in the event of foreclosure. The Board does not find that GTFC ever released Petitioners from their debt.

It is well-established that the sending of commercially reasonable notice by the lender, and not evidence of receipt of notice, is determinative of the issue of legally sufficient notice. Only one of the Petitioners, Tammy Snyder, acknowledged notice of the sale of the mobile home, but GTFC gave both Petitioners proper notice of the sale of their mobile home. The Board will look to the applicable law of the state of Minnesota to determine whether notice of the sale was proper. See Gary and Karen Hill, HUDBCA No. 87-2036-G367 (April 3, 1987). A sale of collateral is commercially reasonable with the giving of “reasonable notification of the time and place of any public sale or reasonable notification of the time after which any private sale or other intended disposition is to be made....” M.S.A. § 336.9-504 (1996). Notice must be “sent in sufficient time to enable those entitled to notice to take appropriate steps to protect their interest in the collateral.... [citations omitted] Further, the notice must be properly addressed.” Ford Motor Credit Co. v. Hertzberg, 511 N.W.2d 25, 26-27 (Minn. 1994). Notice sent to the last known address is reasonable even if the debtor does not receive such notice. Chemlease Worldwide, Inc. v. Brace, Inc., 338 N.W.2d 428, 435 (Minn. 1983). GTFC sent notice of the sale to Charles Snyder at his last known address. Nothing in the record suggests that either Petitioner had advised GTFC of a different address. Charles Snyder, therefore, received reasonable notice of the sale.

Finally, Petitioners have asserted that they first learned of their debt to HUD six years after their default on the debt. The Secretary has submitted evidence that Petitioners each received due process notices in 1999, and Tammy Snyder disputed the debt that same year (Secy. Stat., Dillon Decl. ¶¶ 9 & 10). Petitioners have submitted no documentary evidence in support of their allegations. The Board finds that Petitioners received proper notice and the opportunity for review of this matter.

Order

Upon due consideration of the entire record of this proceeding, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary.

The Order imposing the stay of referral of this matter to the Internal Revenue Service or to the U.S. Department of the Treasury 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 of any Federal payments due to Petitioner.

H. Chuck Kullberg
Administrative Judge

June 17, 2004