

In the Matter of:	:	
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<b>Turner-Young Investment Company,</b>	:	HUDBCA No. 04-K-CH-EE040
	:	Claim Nos. 7-207009000A
	:	7-207009010A
Petitioner	:	
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William L. Latham, Esq. McDonald Sanders 777 Main Street Suite 1300 Fort Worth, Texas 76102	For Petitioner
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Michael Berke, Esq. U.S. Department of Housing and Urban Development Office of Assistant General Counsel for Midwest Field Offices 77 West Jackson Boulevard, Room 2604 Chicago, IL 60606-3507	For the Secretary
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**DECISION AND ORDER**

Petitioner, Turner-Young Investment Company, was notified by Due Process Notice that, pursuant to 31 U.S.C. §§ 3716 and 3720, 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. The Secretary claims that an outstanding amount is due under an indemnification agreement executed by Petitioner.

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, the Board temporarily stayed referral of the debt to the United States Department of the Treasury for offset.

### Summary of Facts

Petitioner, a corporation doing business as a mortgagee, originated a loan in the amount of \$57,822.00 secured by real property located at 6925 Stonewall Road, Fort Worth, Texas (“Stonewall Road property”) on March 4, 1998. (Secretary’s Statement, dated January 31, 2005, Exh. A, Declaration of Stephanie Brewer, (“Brewer Decl. 1”) ¶ 5, Exh. B). The borrower-mortgagor defaulted on the Stonewall Road property loan on December 1, 1999. (Brewer Decl. 1, ¶ 5). A review by HUD’s lender monitoring team in 2000 found noncompliant lending practices by Petitioner in connection with the Stonewall Road property loan, which had “exposed HUD to an unacceptable level of risk.” (Brewer Decl. 1, ¶ 4)

Petitioner originated a second loan in the amount of \$36,656.00 secured by real property located at 1912 Carver Avenue, Fort Worth, Texas (“Carver Avenue property”) on June 10, 1998. (Secretary’s Statement, dated October 27, 2004, Exh. A, Declaration of Stephanie Brewer, (“Brewer Decl. 2”) ¶ 5, Exh. B). The borrower-mortgagor defaulted on the Carver Avenue property loan on February 1, 2000. (Brewer Decl. 2, ¶ 5). The review by HUD’s lender monitoring team in 2000 additionally found noncompliant lending practices by Petitioner in connection with the Carver Avenue property loan, which had also “exposed HUD to an unacceptable level of risk.” (Brewer Decl. 2, ¶ 4).

On January 10, 2001, Petitioner executed an indemnification agreement, which referenced the loans for the Stonewall Road and Carver Avenue properties and required Petitioner to indemnify HUD for its losses on those loans “which have been or may be incurred ....” (Supplement to Secretary’s Statement, Exh. A, Supplemental Declaration of Glen Goodman, dated March 4, 2005, (“Supp. Goodman Decl.”) Exh. A). The indemnification agreement provided that where “a HUD/FHA insurance claim has been paid in full and the property has been sold by HUD to a third party, the amount of indemnification is HUD’s investment ... minus the sales price of the property.” (Supp. Goodman Decl., Exh. A, ¶ 1. (c)). The indemnification agreement defined HUD’s investment as including, but not limited to “the full amount of the insurance claim; any Loss Mitigation partial claims; all taxes and assessments; all maintenance and operating expenses, including costs of rehabilitation and preservation; and all sales expenses, where applicable.” (Supp. Goodman Decl., Exh. A, ¶ 1. (b)).

HUD paid Petitioner’s insurance claim on the Stonewall Road property loan on September 28, 2000. (Brewer Decl. 1, ¶ 5). The Stonewall Road property was appraised on October 4, 2000 at an “estimated market value of ... \$45,000.00.” (Supp. Goodman Decl., ¶ 7, Exh. F). HUD sold the Stonewall Road property on January 5, 2001 for \$45,503.00 “and calculated the loss to the Department using that figure.” (Supp. Goodman Decl., ¶ 8).

The Secretary has alleged that HUD’s total investment due to the default on the Stonewall property loan included: insurance settlement payments, \$59,875.50 (Part A) and \$1,833.13 (Part B); taxes, \$1,874.51; maintenance and operation expenses, \$2,180.45; and sales expenses, \$2,949.15. (Brewer Decl. 1, ¶ 6). HUD’s total loss

following the sale of the Stonewall property, the difference between the sales price and HUD's investment, was \$23,209.74. *Id.* The Secretary has also alleged that Petitioner is indebted to HUD for its loss following the sale of the Stonewall Road property in the following amounts: \$23,209.74 as the unpaid principal balance as of July 30, 2004; \$94.49 as the unpaid interest on the principal balance at 1% per annum through July 30, 2004; and interest on the principal balance at 1% per annum until paid. (Brewer Decl. 1, ¶ 7).

HUD paid Petitioner's insurance claim for the Carver Avenue property loan on June 29, 2001. (Brewer Decl. 2, ¶ 5). The Carver Avenue property was appraised on July 7, 2001 at an "estimated market value ... of ... \$35,000 ...." (Supp. Goodman Decl., ¶ 3, Exh. B). HUD listed the Carver Avenue property for sale on July 16, 2001 and sold it on January 9, 2002 for \$23,005.00. (Supp. Goodman Decl., ¶¶ 3-4). HUD "calculated the loss to the Department using that figure." (Supp. Goodman Decl., ¶ 4).

The sales price for the Carver Avenue property, \$23,005.00, was 65% of its appraised value, \$35,000.00. (Supp. Goodman Decl., ¶ 4). The sales price was within the threshold requirements set forth in a February 28, 2000 HUD Memorandum. (Supp. Goodman Decl., ¶ 4, Exh. D). In that memorandum, HUD's Deputy Assistant Secretary for Single Family Housing stated that in an "effort to deal more effectively with its aged inventory, the Department has revised the thresholds for accepting offers on its single family acquired property inventory." (Supp. Goodman Decl., Exh. D, p. 1). Under HUD's revised thresholds, from "day 151 through day 180 of listing, the [Management and Marketing] contractor must accept offers which produce a net return to HUD equal to or greater than 50 percent of the appraised value." (Supp. Goodman Decl., Exh. D, p. 2).

The Secretary has alleged that HUD's total investment due to the default on the Carver Avenue property loan included: insurance settlement payments, \$39,220.75 (Part A) and \$3,679.34 (Part B); taxes, \$405.24; maintenance and operation expenses, \$1,707.63; and sales expenses, \$2,002.72. (Brewer Decl. 2, ¶ 6). HUD's total loss following the sale of the Carver Avenue property, the difference between the sales price and HUD's investment, was \$24,010.68. *Id.* The Secretary has also alleged that Petitioner is indebted to HUD for its loss following the sale of the Carver Avenue property in the following amounts: \$24,010.68 as the unpaid principal balance as of July 30, 2004; \$97.76 as the unpaid interest on the principal balance at 1% per annum through July 30, 2004; and interest on the principal balance at 1% per annum until paid. (Brewer Decl. 2, ¶ 7).

### **Discussion**

31 U.S.C. §3720A provides federal agencies with remedies 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. Petitioner challenges the amount of HUD's losses on the sales of both the Stonewall Road and Carver Avenue properties because HUD "failed to receive fair market value on the sale of the properties." (Petition to Contest Debt, dated September 4, 2004, ("Pet. Contest Debt") ¶ 4).

Petitioner has submitted to the Board an appraisal of the Stonewall Road property and appraisals of other nearby comparable properties and argues that those appraisals provide evidence of “a value greater than that received for the property.... [and that] the damages ... now being claimed by HUD [are] more than Petitioner is obligated to pay.” (Pet. Contest Debt, ¶ 4, Exh. A). Petitioner’s evidence shows appraised values for the Stonewall Road property of \$67,000 for the tax year 2003 and \$80,000.00 for the tax year 2004. (Pet. Contest Debt, Exh. A). The Stonewall Road property, according to HUD, had an appraised value on October 4, 2000 of \$45,000.00, and HUD sold the property on January 5, 2001 for \$45,503.00. Petitioner’s evidence of appraised values for the years 2003 and 2004 are not evidence of the market value of the Stonewall Road property at the time of sale nor do those appraisals prove that HUD’s sale of the property was unreasonable. The Board finds that HUD’s sale of the Stonewall Road property was reasonable and that the sales price was the proper basis for computing HUD’s loss.

In the same manner, Petitioner has submitted to the Board an appraisal of the Carver Avenue property and appraisals of other nearby comparable properties and argues that those appraisals provide evidence of “a value greater than that received for the property.... [and that] the damages ... now being claimed by HUD [are] more than Petitioner is obligated to pay.” (Pet. Contest Debt, ¶ 5, Exh. B). Petitioner’s evidence shows an appraised value for the Carver Avenue property of \$23,100.00 for both of the tax years 2003 and 2004. (Pet. Contest Debt, Exh. B). However, HUD sold the Carver Avenue property for \$23,005.00, which is an amount almost identical to the appraised value asserted by Petitioner. Petitioner’s evidence does not prove that HUD sold the Carver Avenue property for less than its market value or that the sales price was unreasonable.

Although HUD sold the Carver Avenue property for 65% of the appraised value of \$35,000.00, the sales price of \$23,005.00 was in accordance with HUD’s policy as set forth by the Deputy Assistant Secretary for Single Family Housing in his memorandum. It is well established that HUD may sell property for less than its appraised value as “the result of a business decision consistent with applicable HUD policy and regulation.” Crest Mortgage Company, HUDBCA No. 04-K-CH-EE021, at 5 (October 29, 2004). HUD’s revised thresholds required that its management and marketing contractor accept an offer as low as 50% of the property’s appraised value when the property had been listed for 151 to 180 days. The Carver Avenue property was first listed on July 16, 2001 and was sold 177 days later on January 9, 2002. HUD’s revised thresholds required the sale of the property for a price below its appraised value under those circumstances. The Board finds that the sales price obtained by HUD was justifiable and constituted a proper basis for computing HUD’s loss.

### **Order**

Upon due consideration of the entire record in this case, the Board finds 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.

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H. Chuck Kullberg  
Administrative Judge

April 28, 2005