

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

JOSHUA NORFLEET,

Petitioner.

22-AM-0068-AG-050
(Claim No. 721016704)

September 15, 2023

NOTICE OF TRANSFER

Due to the retirement of Administrative Judge H. Alexander Manuel, the above-captioned matter is reassigned to Administrative Law Judge Alexander Fernández-Pons for adjudication in accord with applicable statutes and regulations.

So **ORDERED**,



J. Jeremiah Mahoney
Chief Administrative Law Judge

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DECISION AND ORDER

On January 4, 2022, Joshua Norfleet, (“Petitioner”) filed a Request for Hearing (“*Hearing Request*”) concerning the amount, enforceability, or payment schedule of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishments as a mechanism for the collection of debts allegedly owed to the United States government.

The Secretary of HUD has designated the administrative judges of this Office of Hearings and Appeals to adjudicate contested cases where the Secretary seeks to collect debts by means of administrative wage garnishment. This hearing is conducted in accordance with procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

FINDINGS OF FACT

On April 11, 2017, Petitioner executed a Promissory Note (“Note”) in favor of the Secretary of the Department of Housing and Urban Development (“Secretary”) in the principal amount of \$75,012.35. The funds secured by the Note were paid by the Secretary to the FHA insured lender to bring Petitioner’s mortgage current as a means of providing foreclosure relief.

The terms of the Note included Petitioner’s promise to pay which was secured by a mortgage, deed of trust, or similar security instrument to protect the Secretary from losses, which might result if the Petitioner defaulted under the Note. Additionally, the manner of payment included that, on or before April 1, 2047, or earlier, when the first of the following events occur:

- (i) borrower has paid in full all amounts due under the primary Note and related mortgage, deed of trust, or similar Security Instruments insured by the Secretary, or
- (ii) the maturity date of the primary Note has been accelerated, or
- (iii) the primary Note and related mortgage, deed of trust or similar Security Instrument are no longer insured by the Secretary, or

- (iv) the property is not occupied by the purchaser as [their] principal residence.

On November 6, 2017, Petitioner filed for Chapter 13 Bankruptcy at the Bankruptcy Court for the Middle District of Florida. Then, in September of 2019, Petitioner sold the property and used the proceeds of that sale to pay off his Chapter 13 Bankruptcy and a car loan. However, HUD and its claim pursuant to the Note were not listed as a creditor or claim in Petitioner's bankruptcy case. As such, the debt to HUD was not discharged or otherwise impacted by the disposition of Petitioner's bankruptcy matter.

On or about October 2, 2019, the FHA mortgage insurance was terminated on Petitioner's primary mortgage, because the primary note and mortgage were paid in full. However, Petitioner did not make repayment on the Note as required and is indebted to the Secretary in the following amounts:

- (a) \$75,012.35 as the total unpaid principal balance as of December 30, 2021;
- (b) \$2,876.15 as the unpaid interest on the principal balance at 2% per annum through December 30, 2021;
- (c) \$9,416.08 as the unpaid penalties and administrative costs as of December 01, 2021; and
- (d) interest on said principal balance from December 31, 2021, at 2% per annum until paid.

A "Notice of Federal Agency's Intent to Initiate Administrative Wage Garnishment Proceedings" ("Notice") dated June 17, 2020, was sent to Petitioner at his last known address at "Grateful Thomas Trl." In accordance with 31 C.F.R. § 285.11(e)(2)(ii), the Notice afforded Petitioner the opportunity to enter into a written repayment agreement with HUD under mutually agreeable terms. Upon receipt of the Notice, Petitioner submitted a request for hearing before this Court.

DISCUSSION

The Secretary claims Petitioner remains indebted to HUD and proposes a repayment schedule of \$2,425.13 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner's disposable pay.

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. See 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. See 31 C.F.R. § 285.11(f)(8)(ii). Additionally, Petitioner may present evidence that the terms of the proposed repayment schedule are unlawful, would cause an undue hardship to Petitioner, or that the alleged debt is legally unenforceable. Id.

As evidence of the Petitioner's indebtedness, the Secretary has filed the *Secretary's Statement* together with a copy of the Note and the Declaration of Brian Dillon. Additionally, the Secretary included Petitioner's Chapter 13 Standing Trustees Final Report and Account

showing the details of Petitioner's bankruptcy proceeding wherein the Secretary is not listed as a creditor. The evidence submitted by the Secretary demonstrates that Petitioner made a promise to repay funds received from HUD and that the debt in this case was not discharged in Petitioner's Chapter 13 Bankruptcy proceeding. Accordingly, this Court finds that the Secretary has met her initial burden of proof.

Petitioner claims he inquired with his primary mortgage regarding payoff of his debt and that this debt to HUD was never mentioned to him during the sale of his property. Petitioner included copies of his bank statements and explained that the proceeds of the sale of his house were wired into his account, and he used the proceeds to pay off the balance of his bankruptcy and car loan.

Petitioner's obligation to repay that *Note* derives from the express language of the *Note* itself. The Note, dated April 11, 2017, is signed and agreed to by Petitioner, which states under borrower's "Promise to Pay," that, "In return for a loan received from Lender, Borrower promises to pay the principal sum of seventy-five thousand twelve and 35/100 (U.S. \$ 75,012.35) to the order of the "Lender." The Note also expressly directs Petitioner to make payment to the Office of Housing FHA-Comptroller in Washington, D.C.

Petitioner provided no evidence that the Partial Claim in the amount of \$75,012.35 due to the Secretary was paid through the bankruptcy, sale of the home, or anytime thereafter. In the absence of a release from HUD discharging Petitioner from the obligation to repay the debt, Petitioner remains indebted to the Secretary in the amounts set forth above. See In re Juanita Mason, HUDOA No. 08-H-NY-AWG70, at p. 3 (December 8, 2008) ("... [F]or Petitioner not to be held liable for the debt, there must either be a release in writing from the lender... or valuable consideration accepted by the lender from Petitioner...") (citations omitted). Accordingly, the Court finds Petitioner liable for the debt in this case in the amounts claimed by the Secretary.

Finally, Petitioner has requested to negotiate repayment terms with the Secretary. This Court is not authorized to extend, recommend or accept any payment plan or settlement offer on behalf of the Department.¹

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. It is:

ORDERED that the Secretary is authorized to seek administrative wage garnishment in the amount of 15% of Petitioner's disposable income per month, or such other amount as determined by the Secretary, not to exceed 15% of Petitioner's disposable income per month. It is

¹ The U.S. Department of Treasury has authority to negotiate and accept settlement offers related to this alleged debt and can be reached at 1-888-826-3127.

FURTHER ORDERED that the *Stay of Referral* of this matter to the U.S. Department of the Treasury for collection that was previously entered in this case is hereby VACATED.

SO ORDERED,

**ALEXANDER
FERNANDEZ-
PONS**

Digitally signed by: ALEXANDER
FERNANDEZ-PONS
DN: CN = ALEXANDER FERNANDEZ-
PONS C = US O = U.S. Government OU
= Department of Housing and Urban
Development, Office of the Secretary
Date: 2023.09.15 13:58:20 -04'00'

Alexander Fernández-Pons
Administrative Law Judge

Finality of Decision. Pursuant to 31 C.F.R. § 285.11(f)(12), this constitutes the final agency action for the purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701 *et seq.*).