

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

In the Matter of:

JOHN M. TABAKIAN,

Petitioner.

22-AM-0076-AG-056  
(Claim No. 721012251)

March 20, 2024

**DECISION AND ORDER**

On January 7, 2022, John M. Tabakian (“Petitioner”) filed a *Hearing Request* (“*Request*”) seeking a hearing 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 judges of the 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 March 28, 2016, Petitioner executed a Promissory Note (“Subordinate Note”) in favor of the Secretary in the principal amount of \$62,363.42. The funds secured by the Subordinate Note were paid by the Secretary to Petitioner’s primary mortgage lender to bring Petitioner’s mortgage (“Primary Note”) current to provide foreclosure relief.

The terms of the Subordinate Note included Petitioner’s promise to pay, secured by a mortgage, deed of trust, or similar security instrument to protect the Secretary from losses if Petitioner defaulted on the Subordinate Note. The Subordinate Note required payment on or before April 1, 2046, or when the first of the following events occurs:

- 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;
- ii. the maturity date of the Primary Note has been accelerated;
- 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 his primary residence.

On June 9, 2017, Petitioner sold his home causing the Primary Note to be paid in full, thereby terminating the FHA insurance on that debt. The Secretary contends Petitioner did not repay the full amount of the Subordinate Note as required and the total amount now due is \$106,122.52. That amount consists of:

- i. \$62,363.42 as the unpaid principal balance as of December 30, 2021;
- ii. \$2,545.55 as the unpaid interest on the principal balance at 1.0% per annum through December 30, 2021;
- iii. \$15,642.73 as the unpaid penalties and administrative costs through December 30, 2021;
- iv. interest on said principal balance from December 31, 2021, at 1.0% per annum until paid; and
- v. U.S. Department of Treasury collection fees equal to 32% of the amount Petitioner owes HUD. See 31 U.S.C. § 3711(g)(6)).

Petitioner has submitted closing documents from the sale of his home purporting to show the Subordinate Note was paid in full. Petitioner also states that in or around January 2018, the attorney who managed the closing informed him that he owed \$60,000.

A “Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings” (“Notice”) dated November 4, 2021, was sent to Petitioner at his last known address. 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. Petitioner has expressed a desire to enter into a repayment agreement, but, as of date of this Decision, has not done so. On December 5, 2021, a Wage Garnishment Order was issued to Petitioner’s employer resulting in garnishments of \$709.64 and \$693.73 in January 2022.<sup>1</sup>

### **APPLICABLE LEGAL PRINCIPLES**

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 or would cause an undue hardship to Petitioner or the alleged debt is legally unenforceable. Id. Petitioner may also postpone the garnishment by presenting evidence he was involuntarily separated from his previous employment and has only been reemployed continuously for less than 12 months. See 31 C.F.R. § 285.11(j). Lastly, the garnishment amount, if any, may be no more than 15% of Petitioner’s disposable pay. See § 285.11(i)(2)(i)(A).

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<sup>1</sup> Both garnishments exceeded the Secretary’s proposed payment schedule. HUD will issue a refund to Petitioner and will ask the U.S. Department of Treasury to contact Petitioner’s employer to correct the garnishment calculation.

## DISCUSSION

### I. Petitioner is Indebted to the Secretary for the Full Amount Owed.

As evidence of Petitioner's indebtedness, the Secretary has filed the *Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable*. Attached as exhibits thereto are a copy of the Subordinate Note and the Declaration of Brian Dillon, attesting to Petitioner's debt. The express language of the Subordinate Note, signed and agreed to by Petitioner, states under "Borrower's Promise to Pay," that "[i]n return for a loan received from Lender, Borrower promises to pay the principal sum of sixty-two thousand three hundred sixty-three dollars and 42 cents (U.S. \$62,363.42), to the order of the Lender." The Subordinate Note further states that payment will be made to HUD in care of Novad Management Consulting, Oklahoma City, Oklahoma. Accordingly, the copy of the Subordinate Note submitted by HUD under oath establishes the existence and amount of the debt owed by Petitioner.

Although Petitioner does not refute the existence of the debt, he claims the sale of his home satisfied the debt. However, the documents Petitioner submitted showing the Primary Note was paid in full do not evidence payment of the Subordinate Note. There is also no evidence Petitioner received a release from HUD discharging him from the obligation to repay the debt. In addition, Petitioner's statement that his closing attorney informed him that a \$60,000 debt remained reveals Petitioner was aware of the debt's continued existence.<sup>2</sup> Thus, Petitioner has not refuted the evidence put forward by the Secretary and remains indebted to the Secretary for the full amount of the debt. 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).

### II. Petitioner Has Shown No Evidence of Involuntarily Separation from His Employer.

At the time Petitioner submitted his *Request*, he contended HUD could not garnish his disposable pay because he had been involuntarily separated from his former employer and had been with his current employer for less than one year. Petitioner claimed he had been involuntarily separated when his former employer asked him to leave immediately after he resigned.

Petitioner has the burden of informing the agency of the circumstances surrounding an involuntary separation from employment. See 31 C.F.R. § 285.11(j). Petitioner has not submitted evidence that his current circumstances meet the requirements of § 285.11(j). Further, when Petitioner filed his *Request*, he only provided an email from his former employer confirming his last date of employment. The email did not show Petitioner was involuntarily separated. Thus, Petitioner has failed to demonstrate any time when his wages were ineligible for garnishment pursuant to § 285.11(j).

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<sup>2</sup> Any cause of action Petitioner believes he may have against a third party must be pursued in another forum. The Tribunal makes no ruling on any such issue and is unable to do so.

### III. Conclusion

The Tribunal finds that Petitioner is indebted to the Secretary for the full amount owed. Accordingly, the Secretary may garnish up to 15% of Petitioner's disposable pay. Should Petitioner wish to negotiate repayment terms with HUD, the Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department.<sup>3</sup>

### ORDER

For the reasons set forth above, the Tribunal finds 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 pay, or such other amount as determined by the Secretary, not to exceed 15% of Petitioner's disposable pay. It is

**FURTHER ORDERED** that the Order imposing the *Stay of Referral* of this matter to the U.S. Department of the Treasury for administrative wage garnishment is **VACATED**.

**SO ORDERED,**

**ALEXANDER  
FERNANDEZ-  
PONS**

Digitally signed by: ALEXANDER  
FERNANDEZ-PONS  
DN: CN = ALEXANDER FERNANDEZ-  
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Department of Housing and Urban  
Development, Office of the Secretary  
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Alexander Fernández-Pons  
Administrative Law Judge

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**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.).

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<sup>3</sup> Petitioner may contact the Secretary's Counsel to discuss a repayment plan.