

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

In the Matter of:

ISAIAH DE LA ROSA,

Petitioner.

22-AM-0081-AG-060
(Claim No. 721018427)

November 13, 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 December 29, 2021, Isaiiah De La Rosa (“Petitioner”) filed a Request for 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 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 4, 2019, Petitioner and his then wife divorced. As a result, Petitioner’s former wife gained possession of their home, upon which a mortgage (“Primary Note”) was held with an FHA-insured lender. On April 22, 2019, Petitioner and his former spouse both executed a Promissory Note (“Subordinate Note”) in favor of the Secretary in the principal amount of \$52,086.70. The funds secured by the Subordinate Note were paid by the Secretary to the lender to bring the mortgage current to provide foreclosure relief.

The terms of the Subordinate 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 if Petitioner defaulted on the Subordinate Note. Additionally, the Subordinate Note requires payment (see “Manner of Payment”) on or before May 1, 2049, or 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;
- 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.

On July 10, 2020, the FHA mortgage insurance was terminated on Petitioner's primary mortgage because the Primary Note was paid in full. However, Petitioner did not repay the Subordinate Note as required. Thus, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$52,086.70 as the unpaid principal balance as of December 31, 2021;
- ii. \$216.95 as the unpaid interest on the principal balance at 1.0% per annum through December 31, 2021;
- iii. \$3,187.90 as the unpaid penalties and administrative costs as of December 31, 2021; and
- iv. interest on said principal balance from January 1, 2022 at 1.0% per annum until paid.

A "Notice of Federal Agency's Intent to Initiate Administrative Wage Garnishment Proceedings" ("Notice") dated December 21, 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 not entered into a written repayment agreement.

DISCUSSION

The Secretary claims the debt is past due and enforceable via administrative wage garnishment against Petitioner. As such, the Secretary proposes a repayment schedule in the amount of \$1,541.43 per month, which will liquidate the debt in approximately three years, or an amount equivalent to 15% of Petitioner's disposable income.

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 Subordinate Note and the Declaration of Brian Dillon that attests to Petitioner's debt. Petitioner claims he does not owe the debt because his former wife owns the home.

The express language of the Subordinate Note, signed and agreed to by Petitioner, states under borrower's "Promise to Pay," that, "In return for a loan received from Lender, Borrower promises to pay the principal sum of fifty two thousand eighty six and 70/100 Dollars (U.S. \$ 52,086.70), to the order of Lender" (emphasis removed). The Subordinate Note also expressly directs Petitioner to make payment to the Office of Housing FHA-Comptroller in Washington, D.C. Moreover, the Subordinate Note states "If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including

the promise to pay the full amount owed.” Put simply, the Subordinate Note clearly states that Petitioner is jointly and severally liable for the debt. Thus, his transfer of the property to his former spouse as a result of their divorce does not negate his obligation to repay the debt. Therefore, in the absence of a release from HUD discharging Petitioner from his obligation to repay the debt, he remains indebted to the Secretary in the amounts set forth above. See In re Juanita Mason, HUDOA No. 08-H-NY-AWG70, at 3 (December 8, 2008) (“for 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, this Court finds Petitioner liable for the debt in the amounts claimed by the Secretary.

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

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-
PONS C = US O = U.S. Government OU
= Department of Housing and Urban
Development, Office of the Secretary
Date: 2023.11.16 15:00:17 -05'00'

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.).