

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

In the Matter of:

STEVEN KIMP,

Petitioner.

22-AM-0122-AG-086
(Claim No. 721018459)

November 17, 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**,

A handwritten signature in blue ink, appearing to read "J. Jeremiah Mahoney", is written over a horizontal line.

J. Jeremiah Mahoney
Chief Administrative Law Judge

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22-AM-0122-AG-86
(Claim No. 721018459)

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DECISION AND ORDER

On February 2, 2022, Steven Kimp (“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 March 17, 2015, Petitioner took out an FHA-insured mortgage of \$130,591 (“Primary Note”). On February 20, 2019, Petitioner executed a Promissory Note (“Subordinate Note”) in favor of the Secretary in the principal amount of \$37,805.58. The funds secured by the Subordinate Note were paid by the Secretary to Petitioner’s lender to bring the mortgage 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. Additionally, the Subordinate Note required payment on or before March 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 May 29, 2020, Petitioner sold his home, and, on June 8, 2020, the mortgage was paid in full, terminating the FHA insurance on the mortgage. 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. \$37,805.58 as the unpaid principal balance as of April 30, 2022;
- ii. \$251.92 as the unpaid interest on the principal balance at 1.0% per annum through April 30, 2022;
- iii. \$2,328.17 as unpaid penalties and administrative costs as of April 30, 2022; and
- iv. interest on said principal balance from May 1, 2022 at 1.0% per annum until paid.

A “*Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings*” (“Notice”) dated January 25, 2022, 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 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 that Petitioner’s Debt is Past Due and Legally Enforceable*. Attached as exhibits are a copy of the Subordinate Note and the *Declaration of Gary Sautter*, who attests to Petitioner’s debt.

Petitioner argues he does not owe the debt because he was not made aware of any outstanding debts or liens when he sold his home and his mortgage was paid in full. However, 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 thirty seven thousand eight hundred five and 58/100 Dollars (U.S. \$ 37,805.58), to the order of the Lender.” The Subordinate Note further states that payment will be made to HUD’s Office of Housing FHA-Comptroller in Washington, D.C. Put simply, Petitioner’s sale of the property to another party does not remove his obligation to fulfill the debt.

Petitioner further contends he does not owe the debt by claiming he did not sign the Subordinate Note. In support of his claim, Petitioner admits he asked for assistance to avoid foreclosure, but states he did not sign any documents because the transaction was done by telephone. However, signatures are presumed to be authentic and authorized, and Petitioner provides no evidence that his signature was forged or unauthorized. See Uniform Commercial Code § 3-308(a), cmt. 1 (Unif. L. Comm’n 1990). Also, in admitting he sought foreclosure

assistance from HUD, Petitioner does not dispute that he received the same. Therefore, 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 Secretary may garnish 15% of Petitioner’s disposable pay.

Should Petitioner wish to negotiate repayment terms with the Department, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department.¹ Petitioner is entitled to seek reassessment the repayment schedule in the future in the event that he experiences materially-changed financial circumstances. See 31 C.F.R. § 285.11(k).

ORDER

For the reasons set forth above, the Court 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 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: 2023.11.17 11:36:31 -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.).

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