

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

In the Matter of:

RICHARD COOK,

Petitioner.

22-AM-0164-AG-018  
(Claim No. 721018811)

April 4, 2024

**DECISION AND ORDER**

On April 20, 2022, Richard Cook (“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 December 22, 2014, Petitioner and Ms. Dee Ann Cook executed a Partial Claims Promissory Note (“Subordinate Note”) in favor of the Secretary in the principal amount of \$16,248.45. 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 December 1, 2044, or when the first of the following events occurs:

- i. Petitioner 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 Petitioner as his primary residence.

On or about August 24, 2020, Petitioner and Ms. Cook refinanced their home loan causing the Primary Note to be paid in full, thereby terminating the FHA insurance on that debt. The Secretary contends Petitioner did not, thereafter, repay the full amount of the Subordinate Note as required. The total amount due now consists of:

- i. \$16,248.45 as the unpaid principal balance as of April 30, 2022;
- ii. \$94.71 as the unpaid interest on the principal balance at 1.0% per annum through April 30, 2022;
- iii. \$1,030.43 as the unpaid penalties and administrative costs through April 30, 2022; and
- iv. interest on said principal balance from May 1, 2022, at 1.0% per annum until paid.<sup>1</sup>

A “Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings” (“Notice”) dated April 5, 2022, sent by the U.S. Department of Treasury on behalf of HUD was received by Petitioner. 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.

## 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).<sup>2</sup>

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 sixteen thousand two hundred forty-eight dollars and 45 cents (U.S. \$16,248.45), to the order of the Lender” (emphasis removed). 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 and that it is owed by Petitioner.

Petitioner does not refute the existence of the debt. Rather, he contends that the debt was satisfied when he refinanced his home loan. As evidence, Petitioner submits a Release of Lien received from his previous mortgagee, which purports to show that the refinance satisfied the Subordinate Note. He also submits the results of a title search conducted at that time which shows no additional liens on the property. However, the Release of Lien only extinguishes the

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<sup>1</sup> If found liable for the debt, Petitioner may also be responsible for U.S. Department of Treasury debt collection fees pursuant to 31 U.S.C. § 3711(g)(6)). Such fees may constitute 30% of the amount Petitioner allegedly owes HUD.

<sup>2</sup> The Notice also offered Petitioner the opportunity to contest the proposed repayment schedule as causing him undue financial hardship. See id. However, Petitioner did not claim financial hardship in his *Request*.

lien securing the Primary Note. There is no evidence that Petitioner actually paid the amount owed to HUD or that HUD released Petitioner from his obligation to repay the Subordinate Note. 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). In addition, the title search only reveals the absence of deeds recorded against his home within the “*preceding twenty-four months*” (emphasis added) of the refinance. Thus, the search would not have revealed a security interest tied to the Subordinate Note, as such an interest would predate that time period.<sup>3</sup> Therefore, Petitioner has not refuted the Secretary’s evidence and remains indebted for the total amount due.

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 HUD.<sup>4</sup>

### ORDER

For the reasons set forth above, the Tribunal finds the subject debt 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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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> 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 lacks jurisdiction to do so.

<sup>4</sup> Petitioner may contact the Secretary’s Counsel to discuss a repayment plan.