

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

In the Matter of:

BRIAN WARD,

Petitioner.


23-AM-0034-AG-024
(Claim No. 721012504)

July 9, 2024

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 or about December 13, 2022, Brian L. Ward (“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

Petitioner procured an FHA-insured mortgage to purchase a home (“Primary Note”). On December 31, 2014, Petitioner executed a Promissory Note (“Subordinate Note”) in favor of the Secretary in the principal amount of \$6,941.94. 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 (see “Manner of Payment”) on or before June 1, 2043, 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 instrument 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 29, 2017, Petitioner received a letter from NOVAD Management Consulting, LLC, indicating that payment for the HUD partial claim debt should be sent to NOVAD Management Consulting, ATTN: Partial Claims Management, 2401 NW 23rd Street, Suite 1A1, Oklahoma City, OK 73107. On July 5, 2017, Petitioner sold his home and sent a check in the amount of \$6,941.94 to Wells Fargo Home Mortgage with a reference number of HUD.

On July 10, 2017, Petitioner's primary mortgage was paid in full, and the FHA mortgage insurance was terminated, causing the Subordinate Note to become due. However, Petitioner did not repay the Subordinate Note as required, nor did HUD receive payment from Wells Fargo Home Mortgage. Thus, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$1,969.83 as the unpaid principal balance as of December 31, 2022;
- ii. \$11.48 as the unpaid interest on the principal balance at 1.0% per annum through December 31, 2022; and
- iii. interest on said principal balance from January 1, 2023, at 1.0% per annum until paid.

A "Notice of Federal Agency's Intent to Initiate Administrative Wage Garnishment Proceedings" ("Notice") dated October 24, 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* ("Secretary's Statement"), together with a copy of the Subordinate Note signed by Petitioner and the Sworn Declaration of Brian Dillon, who attests to Petitioner's debt. Accordingly, the Tribunal finds that the Secretary has met her initial burden of proof as to the existence and enforceability of the debt.

Petitioner claims that he does not owe the debt, because it has already been paid. Petitioner has the burden of producing evidence which demonstrates that the claimed debt is not past due or legally enforceable. See Michael Cook, HUDBCA No. 87-2782-H307 (Aug. 11,

1988). 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 amount set forth above. See In re Juanita Mason, HUDOA No. 08-H-NY-AWG70, at 3 (December 8, 2008) (“for Petitioner to not 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).

Petitioner provides a copy of the Closing Disclosure Attachment, which indicates that when he sold his property on July 5, 2017, a check in the amount of \$6,941.94 was sent to Wells Fargo Home Mortgage.¹ HUD states that it has not received payment from Wells Fargo or Petitioner. Accordingly, Petitioner has provided no evidence that HUD has been repaid in full, or that Petitioner was otherwise legally released by HUD from his obligation to repay the debt.

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 six thousand nine hundred forty-one dollars and 94 cents (U.S. \$6,941.94), to the order of the Lender” (emphasis removed). The Subordinate Note expressly directs Petitioner to make payment to “U.S. Department of HUD c/o Novad Management Consulting” and provides contact information. Petitioner also submits a copy of a letter from NOVAD Management Consulting, LLC, dated June 29, 2017, confirming that payment for the HUD partial claim debt should be sent to NOVAD Management Consulting, ATTN: Partial Claims Management, 2401 NW 23rd Street, Suite 1A1, Oklahoma City, OK 73107. According to Petitioner’s own evidence, Petitioner received notice that payment to HUD should have been sent to NOVAD, and not Wells Fargo, for processing. Petitioner provides no evidence that payment was actually made to HUD or NOVAD. Therefore, the Subordinate Note remains unsatisfied, and the debt is enforceable against Petitioner. Should Petitioner wish to negotiate repayment terms with the Department, this Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department.² 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 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 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 Petitioner may wish to contact Wells Fargo to discuss receipt of the check that was delivered on July 5, 2017, when Petitioner sold his home.

² The U.S. Department of Treasury has authority to negotiate and accept settlement offers related to this debt and can be reached by contacting the HUD attorney assigned to this case.

FURTHER ORDERED that the Order imposing the *Stay of Referral* on 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: 2024.07.09 12:11:44 -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.).