

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

In the Matter of:

THARY TEAV,

Petitioner.

23-AM-0079-AG-042
(Claim No. 721018881)

November 5, 2024

DECISION AND ORDER

On April 12, 2023, Thary Teav (“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 August 14, 2019, Petitioner executed and delivered a Promissory Note in favor of the Secretary in the principal amount of \$68,517.72. The funds secured by the Promissory 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 Promissory 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 Promissory Note. The Promissory Note required payment on or before August 1, 2049, 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; or
- iii. the Primary Note and related mortgage, deed of trust, or similar security instrument are no longer insured by the Secretary.

On or about November 5, 2021, the FHA mortgage insurance on Petitioner's primary mortgage was terminated, as the lender indicated that the primary mortgage was paid in full. The total amount due now consists of:

- i. \$68,517.72 as the unpaid principal balance as of March 30, 2023;
- ii. \$342.48 as the unpaid interest on the principal balance at 1.0% per annum through March 30, 2023;
- iii. \$4,177.04 as the unpaid penalties and administrative costs through March 30, 2023; and
- iv. interest on said principal balance from March 31, 2023, at 1.0% per annum until paid.¹

A "Notice of Federal Agency's Intent to Initiate Administrative Wage Garnishment Proceedings" ("Notice") dated February 21, 2023, 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, but no agreement has been entered.

HUD proposes a repayment schedule of \$2,028.81 per month, or 15% of Petitioner's disposable pay, which will liquidate the debt in approximately three years.

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 Id. § 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 Petitioners' indebtedness, the Secretary has filed the *Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable* together with the Declaration of Brian Dillon, Director, Asset Recovery Division; a copy of the Promissory Note signed by Petitioner; an email from Petitioner; and a signed Debt Resolution Program Financial Statement.

In the *Hearing Request*, Petitioner contests the amount of the debt. However, Petitioner has provided no evidence to support her contention, and takes full responsibility for the debt in a May 12, 2023, email to this Tribunal. The express language of the Promissory 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 eight thousand five hundred seventeen and 72/100 [d]ollars (U.S. \$68,517.72), to the order of the Lender." The Promissory Note further states that payment will be made at the Office of Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, Washington, D.C. In

¹ 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% to the amount Petitioner allegedly owes HUD.

response, Petitioner provides no evidence to refute that put forward by the Secretary, such as a release from HUD. See John M. Tabakian, HUDOHA No. 22-AM-0076-AG-056 (Mar. 20, 2024) (citing In re Juanita Mason, HUDOA No. 08-H-NY-AWG70, at p. 3 (Dec. 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 copy of the Promissory Note submitted by HUD under oath establishes the existence and amount of the debt that it is owed by Petitioner.

Petitioner claims that the Secretary’s proposed garnishment would cause her financial hardship. Financial adversity does not invalidate a debt or release a debtor from a legal obligation to repay it. See Nicole Spencer, HUDOA No. 22-AM-0132-AG-090, at 3 (Nov. 15, 2023) (citing Raymond Kovalski, HUDBCA No. 87-1681-G18 (Dec. 8, 1986)). But 31 C.F.R. § 285.11(k)(3) provides that if financial hardship is found this Tribunal may downwardly adjust the garnishment amount to reflect the debtor’s financial condition. In order for Petitioner to show financial hardship, she “must submit ‘particularized evidence,’ including proofs of payment, showing that [she] will be unable to pay essential subsistence costs such as food, medical care, housing, clothing or transportation.” See Dominique Tozzi, HUDOA No. 23-VH-0054-AG-032 at 2 (Feb. 15, 2024) (quoting Ray J. Jones, HUDAJF 84-1-OA at 2 (Mar. 27, 1985)). Petitioner submitted a Debt Resolution Program Financial Statement, but she did not provide additional documentary evidence to substantiate her claim. Without copies of her pay stub or proof of payments for necessary household expenses, the Tribunal is unable to determine whether repayment in the amount and manner proposed by the Secretary would cause financial hardship.

Accordingly, the Secretary may garnish Petitioner’s disposable pay as proposed. Should Petitioner wish to negotiate repayment terms with the HUD, this Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the HUD.² Petitioner is entitled to seek reassessment of the repayment schedule in the future in the event she experiences materially-changed financial circumstances. See 31 C.F.R. § 285.11(k).³

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

² 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.

³ **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.).

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: 2024.11.05 11:40:15 -05'00'

Alexander Fernández-Pons
Administrative Law Judge