

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

In the Matter of:

DINA SIMMONS-WILLIAMS,

Petitioner.

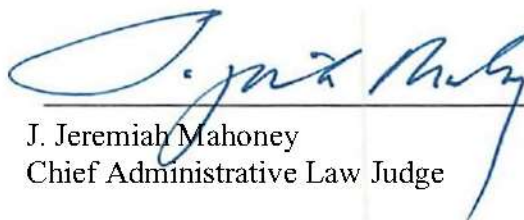
23-AM-0094-AG-054
(Claim No. 721019441)

August 22, 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 May 18, 2023, Dina Simmons-Williams (“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”).¹ 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 October 13, 2016, Petitioner executed and delivered a Promissory Note in favor of the Secretary in the principal amount of \$79,968.07. 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 October 1, 2046, 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;

¹ The *Notice of Docketing, Order, and Stay of Referral* issued by the Tribunal on May 25, 2023, stated that Petitioner filed her *Request* on May 23, 2023. Rather, the Tribunal received her *Request* on May 18, 2023.

- 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 or her principal residence.

On or about November 24, 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. \$79,968.07 as the unpaid principal balance as of May 31, 2023;
- ii. \$418.00 as the unpaid interest on the principal balance at 1.0% per annum through May 31, 2023; and
- iii. interest on said principal balance from June 1, 2023, at 1.0% per annum until paid.²

A "Notice of Intent to Initiate Administrative Wage Garnishment Proceedings" ("Notice") dated March 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.

HUD's attempt to obtain Petitioner's current income information was unsuccessful. Thus, HUD proposes a repayment schedule of \$2,232.94 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards. Alternatively, HUD proposes a repayment schedule equal to 15% of Petitioner's disposable income.

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 Petitioners' indebtedness, the Secretary has filed the *Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable* together with a copy of the Promissory Note signed by Petitioner and the Declaration of Brian Dillon, Director, Asset Recovery Division, wherein Mr. Dillon states the full amount of the debt owed by Petitioner.

In her *Hearing Request*, Petitioner contests the existence of the debt. However, Petitioner has provided no evidence to support her contention. 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 seventy-

² 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.

nine thousand nine hundred sixty-eight and 07/100 [d]ollars (U.S. \$79,968.07), to the order of the Lender.” (emphasis removed). 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. Accordingly, the copy of the Promissory Note submitted by HUD under oath establishes the existence and the amount of the debt owed by Petitioner.

In response, Petitioner provides a Certificate of Satisfaction releasing a lien on the property and Deed of Trust. However, Petitioner’s documents correspond with the Primary Note on the property, not the Promissory Note in favor of HUD. There is also no evidence Petitioner received a release from HUD discharging her from the obligation to repay the debt. 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)). Thus, Petitioner has not refuted the evidence put forward by the Secretary and remains indebted to the Secretary for the full amount of the debt.

Accordingly, the Secretary may garnish up to 15% of Petitioner’s disposable or \$2,232.94 per month, as long as that amount does not exceed 15% of Petitioner’s disposable pay. 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.³ Petitioner is entitled to seek reassessment of the repayment schedule in the future in the event her experience materially-changed financial circumstances. See 31 C.F.R. § 285.11(k).

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 \$2,232.94 per month, discussed above), or such other amount as determined by the Secretary, not to exceed 15% of Petitioner’s disposable pay. It is

³ 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.

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: 2024.08.22 13:42:06 -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.).