

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

In the Matter of:

SAMANTHA RICHARDSON,  
  
Petitioner.

23-AM-0104-AG-056  
(Claim No. 721018554)

June 16, 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 24, 2023, Samantha Richardson (“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 debt by means of administrative wage garnishment. This hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81.

**FINDINGS OF FACT**

On May 21, 2019, to prevent foreclosure, HUD advanced funds in the amount of \$23,087.12 to Petitioner’s FHA-insured lender to bring the mortgage current. In exchange for such funds, Petitioner executed a Promissory Note (“Subordinate Note”) in favor of the Secretary.

The terms of the Subordinate Note required payment on or before June 1, 2049, or when the first of the following events occurred:

- i. the 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; or
- 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, the FHA-insured lender indicated that Petitioner’s primary mortgage was paid in full, and the FHA mortgage insurance was subsequently terminated. As such, Petitioner’s debt to HUD became due and payable pursuant to the terms of the Subordinate Note. However, Petitioner did not repay the Subordinate Note as required. The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$18,125.66 as the unpaid principal balance as of May 30, 2023;
- ii. \$226.50 as the unpaid interest on the principal balance at 1% per annum through May 30, 2023; and
- iii. \$1,096.60 as the unpaid penalties and administrative costs through May 30, 2023; and
- iv. interest on said principal balance from May 31, 2023, at 1% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) dated April 20, 2023, was sent to Petitioner at her 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. To date, Petitioner has not entered into a written repayment agreement. Accordingly, the Secretary proposes withholding 15% of Petitioner’s disposable income to satisfy the alleged debt.

## DISCUSSION

The Secretary bears the initial burden to prove the existence and amount of the alleged debt. 31 C.F.R. § 285.11(f)(8)(i). Thereafter, Petitioner must show by a preponderance of the evidence that no debt exists, that the amount of debt alleged to be owed is incorrect, or that collection of the debt may not be pursued due to operation of law. *Id.* at § 285.11(f)(8)(ii).

As evidence of the existence and amount of the debt, the Secretary filed the *Secretary’s Statement*, a copy of the Subordinate Note signed by Petitioner, and the sworn Declaration of Brian Dillon, who is the Director for the Asset Recovery Division of HUD’s Financial Operations Center. Accordingly, the Tribunal finds that the Secretary has met her initial burden of proof.

In disputing the enforceability of this debt, Petitioner contends that her debt to HUD was paid in full when she paid off her primary mortgage. In support of her claim, Petitioner provides a copy of a Payoff Statement she received from U.S. Bank dated May 22, 2020. The Payoff Statement provides a breakdown of the debt owed by Petitioner totaling \$66,633.24, including a \$187.33 charge labeled, “Recoverable corporate advance balance,” which encompasses a “deferred LDPA second mortgage loan.” In her Hearing Request, Petitioner pointed to the inclusion of the LDPA second mortgage loan in the total payoff amount and underlined the following sentence on the Payoff Statement: “Recoverable corporate advance balance ... includes a deferred LDPA second mortgage loan.” Petitioner seemingly believes the \$187.33 she paid to U.S. bank when she paid off her primary mortgage included the debt owed to HUD. As such, Petitioner claims that her debt to HUD has been paid in full.

“For Petitioner not to be held liable for the full amount of the subject debt, there must be either a release in writing from the former lender explicitly relieving Petitioner’s obligation, ‘or valuable consideration accepted by the lender’ indicating intent to release.” *Teresa Holder*, HUDOA No. 22-VH-0097-AG-069 (December 21, 2023) (citing *Cecil F and Lucille Overby*, HUDBCA No. 87-1917-G250 (December 22, 1986)). Here, Petitioner has not presented a release from HUD discharging her from the obligation to repay the debt. Although Petitioner

provided a Payoff Statement from her primary lender, U.S. Bank, the Payoff Statement reflected only Petitioner's debts to U.S. Bank. As for her debt to HUD, "the Secretary's right to collect the alleged debt stems from the terms of the Note, not from the terms of payoff statements or settlement statements from the primary lender." Dian and Vincent Ellis, HUDOA No. 22-VH-0037-AG-033 (April 13, 2023) (citing Bruce R. Smith, HUDBCA No. 07-A-CH-AWG11 (June 22, 2007)). When Petitioner signed the Subordinate Note, she agreed that, "In return for a loan received from the Lender, the Borrower promises to pay the principal sum ... to the order of the Lender." Therefore, Petitioner became legally obligated to pay the debt to HUD when conditions in the Subordinate Note were met. Thus, Petitioner's satisfaction of her debt to U.S. Bank upon payment in full of her primary mortgage did not also release Petitioner from her obligation to pay her debt to HUD.

Further, Petitioner provided no evidence of valuable consideration accepted by HUD. Even assuming Petitioner paid U.S. Bank the total amount indicated on the Payoff Statement, there is no documentary evidence demonstrating that those funds were forwarded to HUD to pay Petitioner's debt at issue in this matter. Moreover, the Subordinate Note signed by Petitioner expressly directs Petitioner to make payment at the "*Office of Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing ... or any such other place as the Lender may designate in writing by notice to the Borrower.*" (emphasis added). Petitioner produced no evidence of a written notice from HUD designating U.S. Bank as the place of payment. Therefore, any funds sent to U.S. Bank, such as the \$187.33 for a deferred LDPA second mortgage loan as Petitioner suggests, had no impact on Petitioner's debt to HUD.

Because Petitioner has not presented evidence of a written release from her obligation to pay the debt, or of valuable consideration paid to HUD in satisfaction of the debt, Petitioner has failed to meet her burden of proof. This Tribunal has long held that, "assertions without evidence are insufficient to show that the debt ... is not past due and legally enforceable." Sara Hedden, HUDOA No. 09-H-NY-AWG95 (July 8, 2009) (quoting Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996). Accordingly, the Tribunal finds that the subject debt claimed by the Secretary remains enforceable against Petitioner, and the Secretary may garnish up to 15% of Petitioner's disposable pay.

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.<sup>1</sup> Petitioner is entitled to seek reassessment of the repayment schedule in the future in the event that she 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:

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<sup>1</sup> The Department of Treasury has authority to negotiate and accept settlement offers related to this debt and can be reached by contacting HUD counsel assigned to this case.

**ORDERED** that the Secretary is authorized to seek administrative wage garnishment in the amount of 15% of Petitioner's disposable income weekly or such other amount as determined by the Secretary, not to exceed 15% of Petitioner's disposable income. It is

**FURTHER ORDERED** that the Order imposing the *Stay of Referral* of this matter to the U.S. Department of the Treasury for the 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.  
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Housing and Urban 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.*).