

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

In the Matter of:

TENNILLE HIXON,

Petitioner.

23-AM-0090-AG-052
(Claim No. 721019359)

October 10, 2024

DECISION AND ORDER

On May 9, 2023, Tennille Hixon (“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 February 9, 2021, Petitioner executed and delivered a Promissory Note in favor of the Secretary in the principal amount of \$6,096.00. 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 January 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;
- 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 15, 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. \$6,096.00 as the unpaid principal balance as of May 31, 2023;
- ii. \$35.56 as the unpaid interest on the principal balance at 1.0% per annum through May 31, 2023;
- iii. \$419.26 as the unpaid penalties and administrative costs on the balance through May 31, 2023; and
- iv. interest on said principal balance from June 1, 2023, at 1.0% per annum until paid.¹

A "Notice of Intent to Initiate Administrative Wage Garnishment Proceedings" ("Notice") dated March 21, 2023, was sent by the U.S. Department of Treasury on behalf of HUD. 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 provided HUD with a copy of her pay statement dated April 30, 2023. HUD proposes a wage garnishment repayment schedule of \$215.94 per bi-weekly period, an amount 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 Petitioner's 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. 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 six thousand ninety-six dollars and 0 cents Dollars (U.S. \$6,096.00), to the order of 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 is sufficient to establish the existence and the amount of the debt owed by Petitioner.

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% of the amount Petitioner allegedly owes HUD.

In her *Request*, Petitioner does not contest the existence of the debt, but contests the amount owed. However, Petitioner has not provided any evidence to refute the amount of the debt as claimed by the Secretary. This Tribunal has consistently held that “[a]ssertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due and or unenforceable.” Troy Williams, HUDOA No. 09-M-CH-AWG52 (June 23, 2009) (citing Bonnie Walker, HUDBCA No. 95-G-NYT300 (July 3, 1996)). Accordingly, the Tribunal finds Petitioner has not met her burden to prove that the amount of the debt is incorrect.

Petitioner also states in a subsequent pleading that she sold her house in November 2021 whereupon she believed the debt to be paid off at that time because the title company did not uncover evidence of the debt in its search. However, Petitioner later admits she learned the Promissory Note remains recorded in the county in which she resides. Further, there is 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 (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). Petitioner has not refuted the evidence put forward by the Secretary and remains indebted to the Secretary for the full amount of the debt.

Finally, Petitioner claims that garnishment of her wages would cause financial hardship for her family. 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 24 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. 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)).

The *Notice of Docketing* afforded Petitioner the opportunity to present evidence in support of any financial hardship claim. The form through which Petitioner requested a hearing also advised Petitioner to “provide a signed financial statement along with copies of earnings and income records and proof of expenses.” However, to date, Petitioner has not submitted a Consumer Debtor Financial Statement or any corresponding evidence in support of her claim of financial hardship. Thus, the Tribunal finds that Petitioner has failed to meet her burden to prove that the Secretary’s proposed repayment schedule would cause financial hardship.

Accordingly, the Secretary may garnish up to and no more than 15% of Petitioner’s disposable pay or \$215.94 per month. 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

² Petitioner attached to her *Request* an unexecuted “Debt Resolution Program Repayment Agreement” (Form HUD-56146) offering to repay \$100 monthly as of June 26, 2023, which she states she discussed with a HUD employee. However, Petitioner goes on to state that she missed the deadline to submit the agreement and requests the Department reconsider the offer. 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.

repayment schedule in the future in the event 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 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 \$215.94 per month, discussed above), or such other amount as determined by the Secretary, not to exceed 15% of Petitioner’s disposable pay. It is

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: 2024.10.10 12:10:24 -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.).