

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

In the Matter of:

MARVIN E. GODWIN,

Petitioner.

22-AM-0040-AO-003
(Claim No. 721017942)

April 5, 2024

DECISION AND ORDER

On November 23, 2021, the Tribunal received a letter from counsel for Marvin E. Godwin (“Petitioner”) 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”). On July 19, 2021, the Secretary informed Petitioner of her intent to collect the alleged debt by administratively offsetting eligible federal payments due Petitioner. On January 6, 2022, the Secretary informed Petitioner of her intent to also garnish his disposable pay.¹

The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative offsets and garnishments to collect debts allegedly owed to the United States government. Petitioners who contest a debt may submit a written request for a hearing before this Tribunal concerning the existence or amount of the debt or the terms of the repayment schedule. *See* 31 C.F.R. § 285.11(f)(2). Thus, the aforementioned letter is treated as a *Request for Hearing* (“*Request*”).

Upon careful consideration, the Tribunal finds 1) Petitioner remains indebted to the Secretary for the full amount of the remaining debt and 2) the Secretary’s proposed repayment schedule via garnishment of Petitioner’s disposable pay is appropriate.

FINDINGS OF FACT

On October 27, 2014, Petitioner executed a promissory note (“Note”) in favor of the Secretary in the principal amount of \$47,970.01 to avoid foreclosure on his home in Florida. As Petitioner’s mortgage was an FHA loan insured by the Secretary, HUD paid funds to Petitioner’s then primary mortgagee to bring the mortgage current. The Secretary also attached a security

¹ In response to the Tribunal’s *Order for Clarification and Stay of Garnishment*, issued on February 14, 2024, HUD states it intends to collect the alleged debt through both administrative offset and wage garnishment methods. While Petitioner would typically be granted a separate hearing for each collection method, these two issues are consolidated under the extant hearing since each method relies on the same set of facts.

interest for the value of the Note to Petitioner's home in case Petitioner defaulted.

Petitioner promised to pay the Note on or before April 1, 2044, or when the first of the following events occurred:

- i. all amounts due under the mortgage were paid in full;
- ii. the maturity date of the mortgage was accelerated;
- iii. the mortgage was no longer insured by the Secretary; or
- iv. the property was not occupied by the purchaser as his primary residence.

On January 29, 2020, the Note came due when Petitioner's primary mortgagee foreclosed on Petitioner's home, thereby terminating the FHA insurance on the mortgage. Petitioner owed the primary mortgagee \$28,302.72. Prior to the sale, on January 14, 2019, the primary mortgagee filed a complaint in the local Florida court alleging the Secretary's security interest in the property was junior to that of the mortgagee. The Secretary was served the complaint on February 5, 2019. The home sold for \$35,100 in a judicial sale. On July 9, 2020, the foreclosure buyer resold the property for \$284,000.

After the foreclosure, Petitioner did not repay the full amount of the Note as required. As discussed, the Secretary informed Petitioner of her intent to collect the debt by administrative offset. The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$47,970.01 as the unpaid principal balance as of December 30, 2022;
- ii. \$759.24 as the unpaid interest on the principal balance at 1% per annum through December 30, 2022;
- iii. \$5,759.72 as the unpaid penalties and administrative costs through December 30, 2022; and
- iv. interest on the principal balance from December 31, 2022, at 1% per annum until paid.

On December 3, 2021, the Secretary collected \$324 from Petitioner by administrative offset. On December 10, 2021, the Tribunal issued a *Notice of Docketing, Order and Stay of Referral* in response to Petitioner's *Request*. That issuance ordered a hearing on the written record and stayed collection until and unless authorized by the Tribunal.²

On January 6, 2022, the Secretary sent Petitioner notice of HUD's intent to collect the debt through garnishment of up to 15% of Petitioner's disposable pay. In accordance with 31 C.F.R. § 285.11(e)(2)(ii), the Secretary 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.

On January 18, 2022, and January 10, 2023, Petitioner submitted additional letters

² The February 14, 2024, *Order for Clarification and Stay of Garnishment* issued by the Tribunal (see n.1, supra) subsequently stayed garnishment of Petitioner's disposable pay.

opposing the Secretary's actions and requesting the appointment of a settlement judge.³ On January 26, 2023, the Secretary filed the *Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable and Opposition to Appointment of Settlement Judge* as evidence of the Petitioner's indebtedness. Attached as exhibits, among other items, are a copy of the Note and a declaration attesting to Petitioner's debt. On January 26, 2023, Petitioner submitted supplemental argument.

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 or would cause financial hardship to Petitioner or that the alleged debt is legally unenforceable. Id.

Petitioner does not contest the existence of the debt. Indeed, the express language of the 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 forty-seven thousand nine hundred seventy dollars and 1 cents (U.S. \$47,970.01), to the order of Lender." Emphasis removed. The Note further states that payment will be made to HUD.

Petitioner argues the Secretary forfeited her opportunity to collect the debt because she did not recover it from the approximately \$240,000 equity in Petitioner's former home when it was resold after the foreclosure. Petitioner further contends the primary mortgagee's complaint put the Secretary on notice of that sale.⁴ Thus, Petitioner argues the Secretary's lack of action goes against the doctrine of avoidable consequences, citing Florida case law and secondary sources in support thereof. Although this doctrine intends to prevent "a party from recovering those damages inflicted by a wrongdoer that the injured party could have reasonably avoided" (The Florida Bar, Florida Civil Practice Damages § 2.43, at 2-30 (6th ed. 2005); Restatement (Second) of Contracts § 350), defenses based on State law are not valid. See 31 U.S.C. § 3720D ("[n]otwithstanding any provision of State law....").⁵

Petitioner also contends the amount now owed is excessive and Petitioner was of the understanding that the debt did not incur interest. However, HUD is required to charge the interest on outstanding debts as well as administrative costs and penalties. See 31 U.S.C. §§ 3717(a) and (e)(1)-(2). Fees and administrative costs (which may include a collection fee charged by the U.S. Department of Treasury ("Treasury"), see 31 U.S.C. § 3711(g)(6)), may total approximately 30% of any amount collected.

³ Petitioner's request for a settlement judge is treated as a motion. All requests must be made in the form of a motion. See 24 C.F.R. § 26.16(a).

⁴ It does not follow that notice of a foreclosure sale placed the Secretary on notice of the post-foreclosure sale.

⁵ Even if Petitioner's argument was valid, there is no evidence the Secretary's junior security interest in the Note survived the foreclosure sale such that the Secretary could have recovered from the equity when the foreclosure buyer resold Petitioner's home.

For the foregoing reasons, Petitioner remains liable to pay the Secretary the full amount of the remaining debt. Therefore, in the absence of a release from HUD discharging Petitioner from the obligation to pay the debt, Petitioner remains indebted to the Secretary in the amounts set forth above. 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).⁶

The Secretary proposes a repayment schedule of \$1,604.96 per pay period for approximately three years. The Secretary states that, on February 15, 2024, HUD requested a current pay stub from Petitioner but did not receive a response. Accordingly, the Secretary may garnish the lesser of \$1,604.96 per pay period or 15% of Petitioner’s disposable pay.

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. Therefore, it is:

ORDERED that the Secretary is authorized to recoup the debt by garnishing the lesser of \$1,604.96 of Petitioner’s disposable pay per pay period, or 15% of Petitioner’s disposable pay if \$1,604.96 per pay period. The Secretary is also authorized to withhold eligible federal payments due Petitioner. It is

FURTHER ORDERED that the orders staying referral of this matter to the U.S. Department of the Treasury for administratively offsetting federal payments due Petitioner and/or garnishing Petitioner’s disposable pay are 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: 2024.04.05 13:46:31 -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.).

⁶ As to Petitioner’s request for a settlement judge, no material facts regarding the enforceability or delinquency of the debt are at issue to support such intervention. Petitioner must discuss compromise of the debt collection with Treasury, who maintains such authority.