

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

In the Matter of:

MARIA CASTANEDA,

Petitioner.

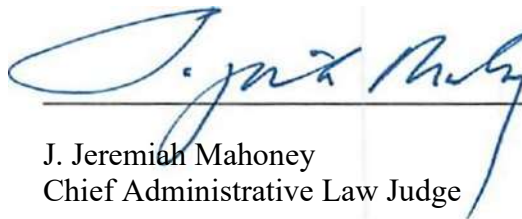
22-AM-0072-AG-054  
(Claim No. 721018404)

January 8, 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

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

In the Matter of:

MARIA CASTANEDA,

Petitioner.

22-AM-0072-AG-054  
(Claim No. 721018404)

January 8, 2024

**DECISION AND ORDER**

On January 3, 2022, Maria Castaneda (“Petitioner”) filed a *Hearing 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 this 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 September 24, 2004, Petitioner executed a Promissory Note (“Subordinate Note”) in favor of the Secretary in the principal amount of \$3,540.75. The funds secured by the Subordinate Note were paid by the Secretary to Petitioner’s primary mortgage lender to bring Petitioner’s mortgage current to provide foreclosure relief.

The terms of the Subordinate 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 Subordinate Note. The Subordinate Note required payment on or before April 1, 2022, or when the first of the following events occurs:

- i. 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;
- 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; or
- iv. the property is not occupied by the purchaser as his or her primary residence.

On July 24, 2020, the mortgage was paid in full, terminating the FHA insurance on the mortgage. However, Petitioner did not repay the full amount of the Subordinate Note as required. Thus, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$3,540.75 as the unpaid principal balance as of December 31, 2021;
- ii. \$14.75 as the unpaid interest on the principal balance at 1.0% per annum through December 31, 2021;
- iii. \$265.43 as the unpaid penalties and administrative costs through December 31, 2021; and
- iv. interest on said principal balance from January 1, 2022 at 1.0% per annum until paid.

A “Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings” (“Notice”) dated December 21, 2021, 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. Petitioner has not entered into a written repayment agreement.

On January 18, 2022, the Tribunal issued a *Notice of Docketing, Order, and Stay of Referral*, ordering Petitioner to submit documentary evidence proving that all or part of the alleged debt is either unenforceable or not past due. Petitioner failed to comply. On December 5, 2022, the Tribunal issued Petitioner an *Order to Show Cause Why This Appeal Should Not Be Dismissed* (“Order to Show Cause”) for failure to comply with the Tribunal’s prior Order. Petitioner failed to respond.

## 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 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*. Attached as exhibits are a copy of the Subordinate Note and the Declaration of Brian Dillon, who attests to Petitioner’s debt.

In her *Hearing Request*, Petitioner contests the existence of the debt, stating she never “used” HUD and paid for her home in 2020. However, Petitioner has provided no evidence to support her contention. Rather, the express language of the Subordinate 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 three thousand five hundred forty dollars and seventy-five cents (U.S. \$3,540.75), to the order of the Lender.” The Subordinate Note further states that payment will be made to HUD’s Office of Housing FHA-Comptroller in Washington, D.C.

Petitioner, at the time of her *Hearing Request*, also objected to the Secretary's proposed garnishment, claiming she was involuntarily terminated from her last employment and had been employed in her current job for less than one year. See 37 C.F.R. § 285.11(j). Petitioner has not provided documentation from her employer showing the date she was hired in her current job and documentation from her prior employer showing termination, despite the Tribunal's orders and inapposite to the instructions in the Hearing Request form. Thus, Petitioner has not met her burden to prove that her wages are ineligible for garnishment because of her current employment status.

Therefore, Petitioner is liable to repay the Secretary the full amount of the remaining debt. Further, the remaining debt is past due at least because the Primary Note was paid in full on July 24, 2020, and is no longer insured by the Secretary. Therefore, in the absence of a release from HUD discharging Petitioner from the obligation to repay 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).

Accordingly, the Secretary may garnish 15% of Petitioner's disposable pay. Should Petitioner wish to negotiate repayment terms with the Department, the Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department.<sup>1</sup>

### **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. However, it is:

**ORDERED** that the Secretary is not authorized to seek administrative wage garnishment of Petitioner's disposable income in any amount. It is

---

<sup>1</sup> 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: 2024.01.08 12:55:41 -05'00'

---

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.).