

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

In the Matter of:

LUIS SOSA,

Petitioner.

22-AM-0100-AG-072
(Claim No. 721018230)

August 30, 2024

DECISION AND ORDER

On January 22, 2022, Luis Sosa (“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 April 23, 2014, Petitioner executed and delivered a Subordinate Note in favor of the Secretary in the principal amount of \$49,163.91. The funds secured by the Subordinate 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 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 January 1, 2044, 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; or

- iv. the property is not occupied by Petitioner as his primary residence.

On or about August 3, 2020, the FHA mortgage insurance on Petitioner's primary mortgage was terminated, as the lender indicated that the mortgage was paid in full. The total amount due now consists of:

- i. \$49,163.91 as the unpaid principal balance as of January 31, 2022;
- ii. \$245.70 as the unpaid interest on the principal balance at 1.0% per annum through January 31, 2022;
- iii. \$3,011.94 as the unpaid penalties and administrative costs through January 31, 2022; and
- iv. interest on said principal balance from February 1, 2022, at 1.0% per annum until paid.¹

A "Notice of Federal Agency's Intent to Initiate Administrative Wage Garnishment Proceedings" ("Notice") dated January 5, 2022, 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 seeks to garnish 10% of Petitioner's disposable pay.

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 the Declaration of Brian Dillon, a copy of the Subordinate Note signed by Petitioner, and a copy of Petitioner's pay stub.

In his *Hearing Request*, Petitioner claims that he does not owe the debt and does not owe the full amount of the debt. Petitioner goes on to accuse his mortgage company of negligence for allowing him to refinance his home without informing him of the consequences it may have on a loan secured by HUD.² 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 \$49,163.91 (forty-nine thousand one hundred sixty-three and 91/100 dollars) to the order of Lender." The Subordinate Note further

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.

² Any cause of action Petitioner believes he may have against a third party must be pursued in another forum. The Tribunal makes no ruling on any such issue and lacks jurisdiction to do so.

states that payment will be made at the Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, Washington, D.C. Accordingly, the copy of the Subordinate Note submitted by HUD under oath establishes the existence and amount of the debt and that it is owed by Petitioner.

Petitioner also claims that the Secretary's proposed garnishment would cause him financial hardship. In order for Petitioner to show financial hardship, he "must submit 'particularized evidence,' including proofs of payment, showing that [he] will be unable to pay essential subsistence costs such as food, medical care, housing, clothing or transportation." Ray J. Jones, HUDAJF 84-1-OA at 2 (Mar. 27, 1985).

In support of his claim, Petitioner submitted copies of his pay stub and his spouse's pay stub, as well as a Consumer Debtor Financial Statement signed by him and his spouse under penalty of perjury. In his Financial Statement, Petitioner lists the following monthly household expenses: \$365 (car insurance), \$50 (public transportation), \$600 (gas), \$647 (electricity), \$450 (food), \$101 (cable), \$142 (internet), \$368 (landline and cell phone), \$150 (water), \$80 (lawn care), \$150 (clothing), and \$15 (out-of-pocket medical expenses).

Petitioner did not provide proof of his necessary household expenses. Where there is insufficient documentation, credit may only be given for certain essential subsistence expenses that are found to be generally credible. See Carolyn Reed, HUDOA No. 12-M-CH-AWG05, at 4 (Jan. 20, 2012). Accordingly, car insurance, public transportation, gas, electricity, food, cable, internet, landline and cell phone, water, clothing, and out-of-pocket medical expenses are found to be essential. However, gas and car insurance are also found to be excessive. Therefore, Petitioner's expenses for gas and car insurance are reduced to a combined total of \$610 for the purpose of the Tribunal's analysis.³

A review of Petitioner's essential monthly expenses reveals that the Secretary's proposed garnishment payment schedule would not cause Petitioner financial hardship. Specifically, deducting Petitioner's essential monthly expenses (totaling \$2,683) plus the proposed 10% garnishment from Petitioner and his spouse's monthly disposable pay (\$3,552.20) leaves Petitioner and his spouse with approximately \$563 per month. Accordingly, the Secretary may garnish Petitioner's disposable pay as proposed.

Should Petitioner wish to negotiate repayment terms with HUD, this Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD.⁴ Petitioner is entitled to reassessment of the repayment schedule in the future in the event he experiences materially-changed financial circumstances. See 31 C.F.R. § 285.11(k).

³ Internal Revenue Service, *Collection Financial Standards* (Aug. 22, 2024), <https://www.irs.gov/businesses/smallbusinesses-self-employed/collection-financial-standards>.

⁴ 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.

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 10% of Petitioner's disposable pay, or such other amount as determined by the Secretary, not to exceed 10% 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: 2024.08.30 11:09:17 -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.).