

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

In the Matter of:

MICHELLE PIZZONIA and JUSTIN PIZZONIA,

Petitioners.

22-AM-0152-AO-013  
(Claim No. 7-210184790A and  
7-210184790B)

November 7, 2024

**DECISION AND ORDER**

This matter is before the Tribunal upon a request for hearing filed by Michelle Pizzonia and Justin Pizzonia (“Petitioners”) on April 11, 2022, pursuant to 24 C.F.R. § 17.69(a), concerning an alleged debt that the United States Department of Housing and Urban Development (“HUD” or “the Secretary”) seeks to collect from Petitioners via administrative offset under 31 U.S.C. § 3716. In their *Request for Hearing* (“Request”), Petitioners contest the existence of the debt, claiming it was or should have been paid in full when their home was sold. The Secretary, however, disputes that Petitioners’ debt to HUD was paid and requests a finding that the debt is past due and legally enforceable.

**LEGAL FRAMEWORK**

The Debt Collection Improvement Act of 1996 authorizes federal agencies to use administrative offset as a mechanism for the collection of debts owed to the United States government. See 31 U.S.C. §§ 3716, 3720A. The Office of Hearings and Appeals has jurisdiction to determine whether Petitioners’ alleged debt is past due and legally enforceable pursuant to 24 C.F.R. §§ 17.61 *et seq.*

The debtor has the right to review the Secretary’s case and present their own evidence. See 24 C.F.R. § 17.69(a)-(b). This Tribunal will then review the written record of the proceeding to determine whether, by a preponderance of the evidence, all or part of that debt is past due and legally enforceable. *Id.* at § 17.69(c). Thereafter, the Tribunal must issue a written decision that constitutes the final agency decision with respect to the past due status and enforceability of the debt. *Id.* § 17.73(a).

**FINDINGS OF FACT**

On August 15, 2017, HUD advanced funds to Petitioners’ FHA-insured lender to bring their primary mortgage current and avoid foreclosure of their property on Field Street in Bristol, Connecticut. In exchange for the foreclosure relief, Petitioners executed and delivered to the Secretary a Promissory Note (“HUD Note”) in the amount of \$11,812.39. The terms of the HUD

Note required payment on August 1, 2047, or earlier when the first of the following events occurred:

- 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; 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.

The HUD Note also required that payment be made at “the Office of Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, c/o NOVAD Management Consulting Shepherd Mall 2401 NW 23rd Street, Suite 1A Oklahoma City, OK 73107 or any such other place as Lender may designate in writing by notice to Borrower.”

On June 18, 2020, Petitioners sold their property on Field Street in a transaction that was handled by a local closing attorney. Through that process, three mortgages including one related to the HUD Note were identified as encumbering the property, and Petitioners directed the closing attorney to pay and satisfy those mortgages with the closing proceeds. The closing attorney remitted payment to satisfy Petitioners’ primary mortgage loan to Midland Mortgage, and their secondary mortgage loan to Capital for Change.

On June 23, 2020, Midland Mortgage informed HUD that Petitioners’ primary mortgage was paid in full. As such, the FHA mortgage insurance related to the primary mortgage was terminated, and Petitioners’ debt to HUD became due and payable pursuant to the terms of the HUD Note. However, the HUD Note was not paid as required.

Following the sale of their property on Field Street, Petitioners moved to separate addresses, neither of which had been provided to HUD. On September 20, 2021, Demand Notices were sent to each Petitioner at the Field Street address, which was their last address known to HUD. Notices of Intent to Collect by Treasury Offset, dated October 18, 2021, were also mailed separately to Petitioners at that same address. However, both Demand Notices and Notice of Intent to Collect by Treasury Offset were returned to HUD as undeliverable, because Petitioners were no longer residing there.<sup>1</sup>

On March 1, 2022, after receiving information relating to a wage garnishment, Petitioner Justin Pizzonia spoke with a Debt Servicing Representative with HUD’s Financial Operations Center, who informed Mr. Pizzonia that HUD intended to collect payment on the debt in this case. Since that time, Petitioners have received notice of HUD’s attempt to obtain payment of this debt via administrative offset.

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<sup>1</sup> As a matter of routine process, before issuing the Demand Notices and the Notices of Intent to Collect by Treasury Offset, HUD pulled a TransUnion Social Security Number Report for each Petitioner in an attempt to obtain a current address. The reports indicated that the last known addresses for Petitioners was the Field Street address.

The Secretary has made efforts to collect repayment of this debt in full, but has been unsuccessful. The Secretary alleges that Petitioners are indebted to HUD in the following amounts:

- i. \$5,181.10 as the unpaid principal balance as of April 30, 2022;
- ii. \$4.32 as the unpaid interest on the principal balance at 1.0% per annum through April 30, 2022; and
- iii. Interest on said principal balance from May 1, 2022, at 1.0% per annum until paid.

## **DISCUSSION**

Petitioners do not dispute entering into an agreement to repay HUD for the funds HUD advanced to them.<sup>2</sup> Rather, Petitioners claim that their debt to HUD should have been paid in full when they sold their Field Street property. Petitioners also claim that the debt in this case is otherwise unenforceable, because of a lack of capacity, undue influence, misrepresentation, nondisclosure, and unconscionability.

As noted *supra*, Petitioners may present evidence to demonstrate that all or part of the debt is not past due or legally enforceable. 24 C.F.R. §§ 17.69(a)-(b). “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 (Dec. 21, 2023).

In this case, Petitioners included a document titled, “Undertaking and Indemnity for Payoff of Existing Mortgage” wherein Petitioners acknowledged the existence of the HUD Note, and directed the closing attorney to fully pay and satisfy all the mortgages encumbering the Field Street property with the closing proceeds. Petitioners also provided copies of checks and releases demonstrating that their primary and secondary mortgages were paid in full. However, notably absent from their documentation is any evidence that their debt to HUD had been paid. Petitioners fail to submit a release from HUD or a copy of a check sent to HUD as payment of their debt. At best, the evidence submitted by Petitioners merely demonstrates that they intended to pay the HUD Note with the closing proceeds. There is no evidence that actually happened. Accordingly, the Tribunal finds that the debt in this case is past due.

Petitioners also claim that the debt in this case is not legally enforceable. Specifically, Petitioners listed a number of legal doctrines that include: lack of capacity, undue influence, misrepresentation, nondisclosure, and unconscionability. Petitioners do not explicitly state how these defenses relate to the facts in this case. However, Petitioners describe a series of circumstances surrounding the sale of their Field Street property, and the closing process that was handled by their real estate agent and a closing attorney. For example, Petitioner Michelle Pizzonia explained that the closing process felt “very rushed.” She also noted that, “[The closing attorney and their real estate agent] assured us that we were free of this house, showing us \$0.00 balances including payoff letters.”

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<sup>2</sup> This agreement is memorialized by the HUD Note, which HUD has provided as evidence of the debt in this case.

To the extent that Petitioners claim their debt to HUD is not enforceable because of the way the sale and closing of their Field Street property was handled, Petitioners are mistaken. For the HUD Note to be considered unenforceable or void, these defenses must relate to the agreement between HUD and Petitioners, and must apply at the time the HUD note was entered into. See e.g., *Petrucelli v. Palmer*, 596 F. Supp. 2d 347, 369 (D. Conn. 2009) (citing Restatement (Second) of Contracts § 153 (1981) and stating that a contract is voidable if there is a mistake at the time a contract was made). Petitioners have failed to produce any evidence or argument that they lacked capacity to enter into their agreement under the HUD Note or that the terms of the HUD Note were unconscionable. Similarly, Petitioners have not identified any undue influence, misrepresentation, or nondisclosure occurring when the HUD Note was executed. Accordingly, the Tribunal finds Petitioners failed to produce evidence that their debt to HUD is unenforceable.

### ORDER

For the reasons set forth above, the Tribunal finds the debt that is the subject of this proceeding to be legally enforceable against Petitioners in the full amount claimed by the Secretary. It is:

**ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative offset in the amounts claimed by the Secretary. 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 offset, imposed on August 25, 2023, 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: 2024.11.07 11:23:15 -05'00'

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.*).