

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

In the Matter of:

PHENICE ALEA-NGONGO,

Petitioner.

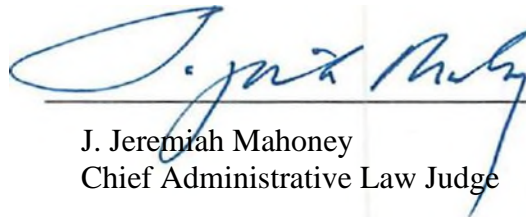
22-AM-0179-AG-117  
(Claim No. 721011516)

September 23, 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

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(Claim No. 721011516)

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**DECISION AND ORDER**

On June 16, 2022, Phenice Alea-Ngongo (“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 or about September 23, 2014, Petitioner and Vontade M. Alea-Ngongo executed a promissory note (“Subordinate Note”), dated September 15, 2014, in favor of the Secretary in the principal amount of \$34,650.40. 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 September 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;
- iv. the property is not occupied by Petitioner as her primary residence; or

- v. Petitioner transfers title to the property by sale or other voluntary or involuntary means.

On or about June 2, 2016, the Primary Note was paid in full, thereby terminating the FHA insurance on that debt and causing the Subordinate Note to become due. The Secretary contends Petitioner did not, thereafter, repay the full amount of the Subordinate Note as required. The total amount due now consists of:

- i. \$17,311.76 as the unpaid principal balance as of July 21, 2022;
- ii. \$10.08 as the unpaid interest on the principal balance at 1.0% per annum through July 21, 2022; and
- iii. interest on said principal balance from July 22, 2022, at 1.0% per annum.<sup>1</sup>

A “Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings” (“Notice”) dated April 25, 2022, sent by the U.S. Department of the Treasury (“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.

## 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).

As evidence of Petitioner’s indebtedness, the Secretary has filed the *Secretary’s Statement that Petitioner’s Debt is Past Due and Legally Enforceable*. Attached as exhibits thereto are a copy of the Subordinate Note and the Declaration of Brian Dillon, Director of the Asset Recovery Division in HUD’s Financial Operations Center, attesting to Petitioner’s debt. Specifically, 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 the Lender, the Borrower promises to pay the principal sum of thirty-four thousand six hundred fifty and 40/100ths (U.S. \$34,650.40), to the order of the Lender.” (emphasis removed). The Subordinate Note further states, “Payment shall be made at the Office of the Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington DC 20140,” i.e., HUD’s address. 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 to HUD.

Petitioner claims she does not owe the full amount of the debt asserted by HUD because HUD already offset \$19,334 from her federal tax refunds. As evidence, she provides copies of her federal tax forms from 2016 – 2021 supported by a statement from her accountant. In

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<sup>1</sup> If found liable for the debt, Petitioner may also be responsible for U.S. Department of the Treasury debt collection fees pursuant to 31 U.S.C. § 3711(g)(6)). Such fees may constitute around or about 30% of the amount Petitioner allegedly owes HUD.

response, HUD acknowledges that the Notice sent by Treasury to Petitioner did not account for those payments, but states they are accounted for in the present amount sought. Moreover, HUD states Petitioner has made no additional payments and that she has not been released from her obligation to repay the Subordinate Note. See In re Jannette M. Bush, HUDOHA 22-AM-0158-AG-106, at 2 (Aug. 30, 2024) (finding no debt liability when there is either a written release from the lender or valuable consideration accepted by the lender as repayment) (citing In re Juanita Mason, HUDOA No. 08-H-NY-AWG70 (Dec. 8, 2008)). Therefore, Petitioner has not refuted the Secretary's evidence that the remaining amount of the debt is yet to be repaid and that she is indebted to the Secretary for that amount.

As Petitioner is liable for the remaining debt, the Secretary seeks to garnish \$481.16 per month which will repay the debt in three years as recommended by the Federal Claims Standards. Petitioner has not provided evidence of her income. Thus, the Secretary may garnish the lessor of \$481.16 or 15% of her monthly disposable pay. Should Petitioner wish to negotiate repayment terms with HUD, the Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD.<sup>2</sup>

### 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 of the lessor of \$481.16 or 15% of Petitioner's disposable monthly pay, or such other amount as determined by the Secretary, not to exceed 15% of Petitioner's disposable pay.<sup>3</sup> 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: 2024.09.23 13:40:48 -04'00'

Alexander Fernández-Pons  
Administrative Law Judge

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<sup>2</sup> Treasury has authority to negotiate and accept settlement offers related to this debt and can be reached at 1-888-826-3127.

<sup>3</sup> **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.).