

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

In the Matter of:

TANGILA TAYLOR,

Petitioner.

23-AF-0147-AG-078
(Claim No. 721019719)

November 16, 2023

DECISION AND ORDER

On August 3, 2023, Tangila Taylor (“Petitioner”) filed a *Request for Hearing* (“Request”) 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 or about March 8, 2013, Petitioner took out an FHA-insured mortgage (“Primary Note”) in the amount of \$161,662. On October 5, 2018, Petitioner executed a Promissory Note (“Subordinate Note”) in favor of the Secretary in the principal amount of \$43,312.57. The funds secured by the Subordinate Note were paid by the Secretary to Petitioner’s lender to bring the 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. Additionally, the Subordinate Note required payment on or before December 1, 2048, or when the first of the following events occur:

- 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; or

- iii. the Primary Note and related mortgage, deed of trust, or similar security instrument are no longer insured by the Secretary.

On or about December 9, 2021, Petitioner refinanced the FHA-insured mortgage under the Primary Note. Thus, the mortgage was paid in full, terminating the FHA insurance. Petitioner states she did not repay the Subordinate Note as required because the parties who assisted her in refinancing the existing mortgage failed to inform her of the debt to HUD and, upon completion of the refinance, left her under the impression that no further debts were owed.

The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$43,312.57 as the unpaid principal balance;
- ii. \$324.72 as the unpaid interest on the principal balance at 1% per annum;
- iii. \$1,305.49 as unpaid penalties and administrative costs on the balance; and
- iv. interest on said principal balance from September 1, 2023 at 1% per annum until paid.

A “*Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings*” (“Notice”) dated May 3, 2022, 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 September 21, 2023, Petitioner filed a motion to implead the parties who assisted her in the refinance. On October 11, 2023, this Court denied Petitioner’s motion for lack of jurisdiction over those parties.

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 and Proposed Repayment Schedule* (“Secretary’s Statement”). Attached as exhibits are a copy of the Subordinate Note, the Declaration of Brian Dillon, who attests to Petitioner’s debt, and a pay stub provided by Petitioner.

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 FORTY-THREE THOUSAND THREE HUNDRED TWELVE DOLLARS AND 57 CENTS Dollars (U.S. \$43,312.57),

to the order of Lender” (emphasis removed). The Subordinate Note further states that payment will be made to HUD’s Office of Housing FHA-Comptroller in Washington, D.C.

Petitioner acknowledges the debt in a letter dated May 4, 2023, which seeks recompense from those who assisted her in the refinance of her FHA-insured mortgage. However, she claims the debt is not past due because she was not made aware of the debt during the same. Nevertheless, the plain language of the Subordinate Note, under “MANNER OF PAYMENT,” clearly states the debt becomes due when “[t]he Primary Note and related mortgage, deed of trust or similar Security Instrument are no longer insured by the Secretary.” Here, the Subordinate Note became due on or about December 9, 2021 when Petitioner’s refinance terminated the FHA-insurance, as corroborated by the Secretary’s Statement. Therefore, in the absence of a release from HUD discharging Petitioner from the obligation to repay the debt, Petitioner is presently 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).

Although Petitioner does not claim financial hardship, she provides a copy of her pay stub showing biweekly disposable pay of \$1,123.24. Accordingly, this Court finds that the Secretary may garnish no more \$168.49 of Petitioner’s disposable pay biweekly, which is 15% of the same. Thus, the Secretary’s proposed garnishment repayment schedule of 15% of Petitioner’s disposable pay is appropriate.

Should Petitioner wish to negotiate repayment terms with the Department, this Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the Department.¹ Petitioner is entitled to seek reassessment the repayment schedule in the future in the event that he experiences materially-changed financial circumstances. See 31 C.F.R. § 285.11(k).

ORDER

For the reasons set forth above, the Court finds the debt that is the subject of this proceeding 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 15% of Petitioner’s disposable income biweekly, or such other amount as determined by the Secretary, not to exceed 15% of Petitioner’s disposable income biweekly. It is

¹ 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: 2023.11.16 09:32:55 -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.).