

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

In the Matter of:

ERNEST NASTARI, JR.,

Petitioner.

23-AF-0152-AO-040  
(Claim No. 7-210212070A)

November 27, 2024

**DECISION AND ORDER**

This matter is before the Tribunal upon a request for hearing filed by Ernest Nastari, Jr., (“Petitioner”), through counsel, on August 21, 2023, 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 Petitioner via administrative offset under 31 U.S.C. § 3716. In his *Request for Hearing* (“Request”), Petitioner claims a title company failed to account for the outstanding subordinate mortgage owed to HUD when Petitioner refinanced his home on April 25, 2022. The Secretary states that any error by a title company does not impact Petitioner’s liability to HUD 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 Petitioner’s 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 September 16, 2013, HUD advanced funds to Petitioner’s FHA-insured lender to bring his primary mortgage current and avoid foreclosure of his property. In exchange for the foreclosure relief, Petitioner executed and delivered to the Secretary a Partial Claims Promissory

Note (“HUD Note”) in the amount of \$86,764.08. The terms of the HUD Note required payment on September 1, 2043, 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;
- iii. The 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 principal residence.

The HUD Note also required that payment be made to “U.S. Department of HUD c/o Deval LLC, Westpoint 1, Suite 300, 1255 Corporate Drive, Irving, TX 75038 or any such other place as Lender may designate in writing by notice to Borrower.” On April 25, 2022, Petitioner refinanced the loan encumbering his home. At that time, Greenwich Mortgage Corporation held a first position loan on the property.

On May 3, 2022, the FHA insurance on the first mortgage was terminated as the lender indicated that the mortgage was paid in full, and Petitioner’s debt to HUD became due and payable pursuant to the terms of the HUD Note. However, the HUD Note was not paid as required. On May 15, 2023, a Demand Notice was sent to Petitioner’s last known address. A Notice of Intent to Collect by Treasury Offset, dated July 17, 2023, was also mailed to Petitioner at the same address.

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

- i. \$86,764.08 as the unpaid principal balance as of November 30, 2023;
- ii. \$505.89 as the unpaid interest on the principal balance at 1.0% per annum through November 30, 2023;
- iii. \$5,275.47 as the unpaid penalties and administrative charges on the principal balance through November 30, 2023; and
- iv. Interest on said principal balance from December 1, 2023, at 1.0% per annum until paid.

## **DISCUSSION**

Petitioner does not dispute the existence of the debt owed to HUD. Instead, Petitioner claims that the HUD Note was overlooked by Inspire Closing Services, Inc., when it handled Petitioner’s closing in 2022. Petitioner provided a copy of a Complaint filed with the Providence Superior Court in support of his position that the closing company is to blame for nonpayment. The Complaint alleges a breach of contract and negligence on the part of Inspire Closing Services, Inc., for failing to include the HUD Note in the closing.

Petitioner's claim that Inspire Closing Services, Inc. failed to pay off the HUD Note is not a valid basis for releasing him from liability for the subject debt. Petitioner signed the HUD Note and agreed to the terms therein. "A third party's error or negligence does not normally relieve Petitioner of liability for the debt ... Petitioner's obligation to pay the debt derives from the terms of the Note." *In re Stephond West*, HUDOHA No. 17-AM-0026-AG-006 (Mar. 14, 2018), citing *In re Bryan McClees*, HUDOHA No. 17-AM-0037-AO-010 (Feb. 14, 2018) and *In re Cydine A. Taylor*, HUDOHA No. 14-AM-0063-AO-005 (Oct. 22, 2014); also see, *In re Judith Herrera*, HUDOA No. 12-M-CH-AWG27 (July 12, 2012) (this Tribunal found that a statement to Petitioner by a title company that "all was okay ... petitioner did not owe debt" was insufficient as evidence to prove that HUD debt had been paid). The evidence submitted by Petitioner demonstrates that he was aware of the HUD Note and expected the HUD Note to be paid with the closing proceeds. Nevertheless, that did not happen, and Petitioner has not presented evidence that the debt that is the subject matter of this proceeding has been satisfied, or that HUD has released him from his obligation to repay it. See e.g., *In re Teresa Holder*, HUDOA No. 22-VH-0097-AG-069 (Dec. 21, 2023) (holding that there must be a release in writing from the lender, or valuable consideration accepted by the lender indicating an intent to release). Accordingly, the Tribunal finds that the debt in this case is past due and enforceable.

### 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 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 23, 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: 2024.11.27 11:09:38 -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.*).