

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

In the Matter of:

LYNNETTE BROWN,

Petitioner.

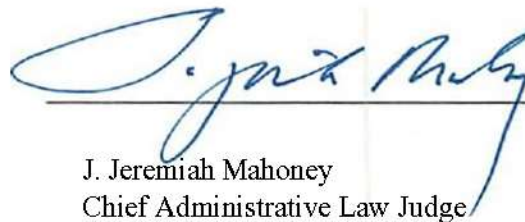
23-AM-0030-AG-020
(Claim No. 721016264)

July 18, 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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DECISION AND ORDER

On December 13, 2022, Lynnette Brown (“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

Petitioner procured an FHA-insured mortgage on her primary property (“Primary Note”). To prevent foreclosure, HUD advanced funds to Petitioner’s lender to bring the primary note current. In exchange for foreclosure relief, on November 25, 2014, Petitioner executed and delivered a Partial Claim Promissory Note (“Subordinate Note”) to HUD in the amount of \$36,125.00. The terms of the Subordinate Note provide that the balance would be due when the existing mortgage was paid in full.

The terms of the Subordinate Note included Petitioner’s promise to pay which was 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 requires payment on or before November 2044, 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 instrument 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 the purchaser as her primary residence.

On June 24, 2019, Petitioner provided a written authorization to Surety Title Agency to request mortgage payoffs for two loans with Utah Housing Corporation. She did not identify the Subordinate Note as being a debt that needed to be paid off.

Petitioner sold her property on July 12, 2019, and that transaction resulted in the payment of Petitioner's two loans with Utah Housing Corporation. On July 16, 2019, HUD received notice that the mortgage was paid in full, which made the Subordinate Note immediately due. However, Petitioner did not repay the Subordinate Note as required. Thus, the Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$31,056.06 as the unpaid principal balance as of December 31, 2022;
- ii. \$595.01 as the unpaid interest on the principal balance at 1.0% per annum through December 31, 2022;
- iii. \$4,191.66 as the unpaid penalties and administrative costs through December 31, 2022; and
- iv. interest on said principal balance from January 1, 2023, at 1.0% per annum until paid.

A "Notice of Federal Agency's Intent to Initiate Administrative Wage Garnishment Proceedings" ("Notice") dated October 20, 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.

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 undue hardship to Petitioner, or that the alleged debt is legally unenforceable. Id.

As evidence of Petitioner's indebtedness, the Secretary has filed the *Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable* ("Secretary's Statement"), together with a copy of the Subordinate Note signed by Petitioner and the sworn Declaration of Brian Dillon, who attests to Petitioner's debt. Accordingly, the Tribunal finds that the Secretary has met her initial burden of proof.

Petitioner claims that she does not owe the debt, because it had already been paid in full. Petitioner has the burden of producing evidence which demonstrates that the claimed debt is not past due or legally enforceable. See Michael Cook, HUDBCA No. 87-2782-H307 (Aug. 11,

1988). In the absence of a release from HUD discharging Petitioner from her obligation to repay the debt, she remains indebted to the Secretary in the amount set forth above. See In re Juanita Mason, HUDOA No. 08-H-NY-AWG70, at 3 (December 8, 2008) (“for Petitioner to not 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). In support of her position, Petitioner provides copies of a letter dated September 11, 2019, and the Substitution of Trustee and Deed of Reconveyance, which confirms that Petitioner’s FHA insured mortgage with Utah Housing Corporation had been paid in full. However, Petitioner’s FHA insured mortgage is independent of her debt owed to HUD. Accordingly, Petitioner has provided no evidence that HUD has been repaid in full, or that Petitioner was otherwise legally released by HUD from her obligation to repay the debt.

The express language of the Subordinate Note, signed and agreed to by Petitioner, states under borrower’s “Promise to Pay,” that, “In return for a loan received from Lender, Borrower promises to pay the principal sum of, thirty-six thousand one hundred twenty-five dollars and zero cents (U.S. \$36,125.00), to the order of the Lender” (emphasis removed). The Subordinate Note expressly directs Petitioner to make payment to the Office of Housing FHA-Comptroller in Washington, D.C. Petitioner provides no evidence that payment was made to HUD or that the Subordinate Note in the amount of \$36,125.00 was paid. Therefore, the Subordinate Note remains unsatisfied, and the debt is enforceable against Petitioner.

Although Petitioner does not claim financial hardship, she provides a copy of her biweekly pay statement from Aerospace Engineering Support for the pay period ending on December 31, 2022. The pay statement reflects Petitioner’s biweekly disposable pay of \$1,774.33. Accordingly, this Tribunal finds that the Secretary may garnish no more than 15%, or \$266.14, of Petitioner’s biweekly disposable pay. 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 Tribunal 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 Tribunal 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 per month, or such other amount as

¹ The U.S. Department of Treasury has authority to negotiate and accept settlement offers related to this debt and can be reached by contacting the HUD attorney assigned to this case.

determined by the Secretary, not to exceed 15% of Petitioner's disposable income per month. It is

FURTHER ORDERED that the Order imposing the *Stay of Referral* on 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: 2024.07.16 14:15:09 -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.).