

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

In the Matter of:

DEBORAH SABOL

Petitioner.

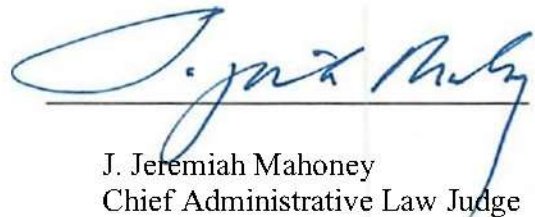
23-AM-0032-AG-022
(Claim No. 721016787)

July 9, 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 20, 2022, Deborah Sabol (“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 debt 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

In March 2016, Petitioner defaulted on her HUD-insured primary mortgage and was threatened with foreclosure. As a result, on March 4, 2016, Petitioner executed a Promissory Note (“Subordinate Note”) in favor of the Secretary in the principal amount of \$9,017.43. The funds secured by the Subordinate Note were paid by the Secretary to Petitioner’s lender to bring the mortgage current and provide foreclosure relief.

The terms of the Subordinate Note required payment on or before March 1, 2041, or when the first of the following events occurred:

- i. the 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; or
- iv. the property is not occupied by the purchaser as his or her principal residence.

Payment was to be made in the manner specified in the Subordinate Note: “at the U.S. Department of HUD c/o Novad Management Consulting, Shepherd’s Mall, 2401 NW 23rd Street,

Suite 1A1, Oklahoma City, OK 73107 ... or any such other place as [HUD] may designate in writing by notice to Borrower.”

On October 22, 2019, Petitioner sold the home that was the subject of the primary mortgage. When Petitioner sold her home, the Settlement Agent handling the transaction used the proceeds from the sale to pay Petitioner’s Primary Note and also remitted a check in the amount of \$15,050.93 to North Carolina Housing Finance Agency. Having paid off her mortgage with the proceeds of the sale, Petitioner’s lender notified the Secretary on October 31, 2019, and the FHA mortgage insurance was subsequently terminated. As such, Petitioner’s debt to HUD became due and payable pursuant to the terms of the Subordinate Note. However, Petitioner did not repay the Subordinate Note as required. The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$8,567.00 as the unpaid principal balance as of November 30, 2022;
- ii. \$128.52 as the unpaid interest on the principal balance at 2% per annum through November 30, 2022;
- iii. \$631.33 as the unpaid penalties and administrative costs as of November 30, 2022; and
- iv. interest on said principal balance from December 1, 2022, at 2% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice”) dated October 24, 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. To date, Petitioner has not entered into a written repayment agreement.

Between August 2020 through September 2022, HUD received nineteen prior garnishments and offset payments from Petitioner. These payments, totaling \$2,612.81, are reflected in the unpaid balance stated above. A subsequent Wage Garnishment Order dated November 23, 2022, was issued to Petitioner’s employer, but Petitioner’s pay has not yet been withheld based on that Order.

Pursuant to 31 C.F.R. § 285.11(f)(4), this Tribunal stayed wage garnishments upon receiving Petitioner’s Hearing Request until the issuance of this written decision. Based on the foregoing, the Secretary requests that the administrative wage garnishment be authorized at 15% of Petitioner’s disposable pay, resulting in a repayment schedule of \$259.08 monthly.

DISCUSSION

The Secretary bears the initial burden of proof to show the existence and amount of the alleged debt. 31 C.F.R. § 285.11(f)(8)(i). Thereafter, Petitioner must show by a preponderance of the evidence that no debt exists, that the amount of debt alleged to be owed is incorrect, or that collection of the debt may not be pursued due to operation of law. *Id.* at § 285.11(f)(8)(ii).

As evidence of the existence and amount of the debt, the Secretary filed the *Secretary's Statement*, a copy of the Subordinate Note signed by Petitioner, and the sworn Declaration of Gary Sautter, who is the Director for the Asset Recovery Division of HUD's Financial Operations Center. Accordingly, this Tribunal finds that the Secretary has met her initial burden of proof.

In disputing the enforceability of this debt, Petitioner first contends that she was unaware that the subject debt existed. After selling her home, Petitioner sent an email to the Settlement Agent, stating, "There was not an additional loan in the amount \$9,017.43 payable to [the] U.S. Department of Housing and Urban Development, ... nor did it show in [the] title searches." She further stated, "Without any knowledge of this debt, I need to file a claim as I would not have sold [the] property owing more than I was getting."

However, the record indicates that Petitioner was, in fact, aware of the debt. Petitioner acknowledged in her email to the Settlement Agent: "During the mortgage at PNC, I did get some help from agencies. ... I was led to believe the amounts were \$9,017.43 to HUD and a second amount for \$6,033.50 to NC Housing and Finance. ... Based on a title search in 2014 by NC Housing and again when your agency ran the title information last fall, these two loans were the only loans other than the PNC mortgage on the property." Although Petitioner previously claimed that the title search had not revealed her debt to HUD, the fact remains that when Petitioner executed the Subordinate Note, she was put on notice that she received a loan from HUD that must be repaid. Having signed and agreed to the terms of the Note, Petitioner may not now claim that she did not know about the debt.

Petitioner also claims that the debt that is the subject of this proceeding was paid in full after the closing on her house in 2019. In support of her claim, Petitioner presents as evidence a copy of a check dated October 22, 2019, made out to NCHFA in the amount of \$15,050.93. The check memo states, "Payoff of Second Mortgage Loan." Petitioner claims the check paid off her debt to both HUD and NCHFA.

"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 (December 21, 2023) (citing Cecil F and Lucille Overby, HUDBCA No. 87-1917-G250 (December 22, 1986)). In this case, Petitioner has presented neither a release from HUD discharging her from the obligation to repay the debt nor evidence of valuable consideration accepted by HUD. At best, Petitioner produced evidence that she sent NCHFA funds that may have included the amount she owed to HUD. However, there is no evidence that her debt to HUD was ever paid from those funds. Moreover, the Subordinate Note signed by Petitioner expressly directs Petitioner to make payment at the "*U.S. Department of HUD ... or any such other place as Lender may designate in writing by notice to Borrower.*" (emphasis added). Petitioner's check is made out to a wholly separate entity with no evidence of a written notice from HUD designating NCHFA as the place of payment. Therefore, Petitioner's debt to HUD remains outstanding, as she did not comply with the terms of repayment.

Because Petitioner has not presented evidence of a written release from her obligation to pay the debt, or of valuable consideration paid to HUD in satisfaction of the debt, Petitioner has failed to meet her burden of proof. This Tribunal has long held that, “assertions without evidence are insufficient to show that the debt ... is not past due and legally enforceable.” Sara Hedden, HUDOA No. 09-H-NY-AWG95 (July 8, 2009) (*quoting Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996)). Thus, the Tribunal finds that the subject debt claimed by the Secretary remains enforceable against Petitioner.

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 of the repayment schedule in the future in the event that she 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.² It is:

ORDERED that the Secretary is authorized to seek administrative wage garnishment in the amount of 15% of Petitioner’s disposable income monthly or such other amount as determined by the Secretary, not to exceed 15% of Petitioner’s disposable income. It is

FURTHER ORDERED that the Order imposing the *Stay of Referral* of this matter to the U.S. Department of the Treasury for the 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: 2024.07.09 12:03:26 -04'00'

Alexander Fernández-Pons
Administrative Law Judge

¹ The Department of Treasury has authority to negotiate and accept settlement offers related to this debt and can be reached by contacting the HUD Financial Operations Center or HUD counsel.

² **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.*).