

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

In the Matter of:

CHRISTOPHER ALELLO,

Petitioner.

24-AF-0042-AG-033
(Claim No. 721021543)

January 6, 2025

DECISION AND ORDER

On November 17, 2023, Christopher Alello (“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 September 13, 2021, Petitioner executed and delivered a Subordinate Note (“The Note”) in favor of the Secretary in the principal amount of \$12,436.97. The funds secured by the Note were paid by the Secretary to Petitioner’s primary mortgage lender to bring Petitioner’s mortgage current to provide foreclosure relief.

The terms of the 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 Note. The Note required payment on or before October 1, 2051, or, if earlier, when the first of the following events occurs:

- 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, 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 July 20, 2022, Petitioner's primary mortgage was paid in full, and the FHA mortgage insurance was terminated by the lender. These events caused the Note to become due. The total amount due now consists of:

- i. \$12,436.97 as the unpaid principal balance as of October 30, 2023;
- ii. \$155.45 as the unpaid interest on the principal balance at 3.0% per annum through October 30, 2023;
- iii. \$805.96 as the unpaid penalties and administrative costs on the balance through October 30, 2023; and
- iv. interest on said principal balance from October 31, 2023, at 3.0% per annum until paid.¹

A "Notice of Intent to Initiate Administrative Wage Garnishment Proceedings" ("Notice") dated October 17, 2023, was sent by the U.S. Department of Treasury on behalf of HUD. 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.

HUD's attempt to obtain Petitioner's current income information was unsuccessful. Therefore, HUD proposes a wage garnishment repayment schedule of \$372.18 per month to liquidate the debt in approximately three years, or alternatively an amount equal to 15% of Petitioner's disposable income.

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* together with a copy of the Subordinate Note signed by Petitioner and the Declaration of Brian Dillon, Director, Asset Recovery Division, wherein Mr. Dillon states the full amount of the debt owed by Petitioner. The express language of the 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, Borrower promises to pay the principal sum of Twelve Thousand Four Hundred Thirty-Six and 97/100ths (U.S. \$12,436.97), to the order of the Lender." (emphasis removed). The Note further states that payment will be made at the Office of Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, Washington, D.C. Accordingly, the copy of the Note

¹ If found liable for the debt, Petitioner may also be responsible for U.S. Department of Treasury debt collection fees pursuant to 31 U.S.C. § 3711(g)(6).

submitted by HUD under oath is sufficient to establish the existence and the amount of the debt owed by Petitioner.

In his *Request*, Petitioner contests the existence of the debt stating that he paid off his home, so that the home would not go into foreclosure. Petitioner goes on to state he received a letter from his mortgage bank stating his home was paid off. However, Petitioner has not provided any evidence to refute the existence of the debt nor shown that the Note in favor of the Secretary was paid off. “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.” See *In re Gisela Gonzalez Figueroa*, HUDOHA No. 24-AF-0015-AO-003 (Dec. 6, 2024). The letter from US Bank fails to prove that Petitioner paid off the Note in favor of the Secretary. The letter does not mention the amount due to the Secretary, or make any reference to Petitioner’s debt arising from the Note at issue in this matter. Absent any such evidence, the Tribunal finds that the subject debt is past due and legally enforceable against Petitioner in the amount claimed by the Secretary.

Accordingly, the Secretary may garnish up to and no more than 15% of Petitioner’s disposable pay or \$372.18 per month. Should Petitioner wish to negotiate repayment terms with the HUD, this Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the HUD. Petitioner is entitled to seek reassessment of the repayment schedule in the future in the event 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 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 in the amount of 15% of Petitioner’s disposable pay (or \$372.18 per month, discussed above), or such other amount as determined by the Secretary, not to exceed 15% of Petitioner’s disposable pay. 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,

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: 2025.01.06 14:05:03 -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.).