

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

In the Matter of:

IVAN GREGG,

Petitioner.

24-AF-0047-AG-037
(Claim No. 721019993)

January 8, 2025

DECISION AND ORDER

On November 22, 2023, Ivan Gregg (“Petitioner”) filed a *Hearing 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

Petitioner and his spouse executed and delivered a Subordinate Note, dated August 22, 2013, in favor of the Secretary in the principal amount of \$15,903.90 (“Note 1”). Petitioner and his spouse also executed and delivered a Subordinate Note, dated April 19, 2016, in the principal amount of \$14,091.44 (“Note 2”).¹ The funds secured by the Notes were paid by the Secretary to Petitioner’s primary mortgage lender to bring Petitioner’s mortgage current and provide foreclosure relief to Petitioner.

The terms of the Note 1 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 Note 1. Note 1 required payment on September 1, 2043, or when the first of the following events occurs:

¹ Note 1 and Note 2 are collectively referred to as the “Notes.”

- 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 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 primary residence.

The terms of the Note 2 also 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 Note 2. Note 2 required payment on September 1, 2043, or when the first of the following events occurs:

- 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 Note and related mortgage, deed of trust or similar Security Instrument are no longer insured by the Secretary.

On or about December 23, 2021, the Federal Housing Administration mortgage insurance on Petitioner's primary mortgage was terminated, as the lender indicated that the primary mortgage was paid in full. The total amount due on the Notes now consists of:

- i. \$28,381.91 as the total unpaid principal balance as of December 7, 2023;
- ii. \$0.00 as the unpaid interest on the principal balance at 1.00% per annum as of December 6, 2023;
- iii. \$0.00 as the unpaid penalties and administrative costs as of December 7, 2023; and
- iv. interest on said principal balance from December 8, 2023 at 1.00% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice") was sent to Petitioner on July 5, 2023. 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.

A Wage Garnishment Order, dated August 8, 2023, was sent to Petitioner's employer. Petitioner has been garnished seven times, totaling \$4,298.86. Those garnishment payments are reflected in the balance discussed above.

Petitioner provided HUD with a recent pay statement, dated November 24, 2023. HUD proposes a wage garnishment repayment schedule of \$437.00 per bi-weekly pay period, or 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 are legally unenforceable. Id.

As evidence of the Petitioner's indebtedness, the Secretary filed the *Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable* together with copies of the Notes and the Declaration of Brian Dillon, wherein Mr. Dillon, Director of HUD's Asset Recovery Division, states the amount owed by Petitioner. The express language of the Notes, signed and agreed to by Petitioner, state under "Borrower's Promise to Pay" that "[i]n return for a loan received from the Lender, the Borrower promises to pay the principal sum... to the order of the Lender." The Notes further state that payment shall be made at the Office of Housing FHA-Comptroller, Director of Mortgage Insurance Accounting and Servicing, 451 Seventh Street, SW, Washington, DC. Accordingly, the copies of the Notes submitted by HUD under oath are sufficient to establish the existence and the amount of the debt owed by Petitioner.

Petitioner does not contest the existence of the debt. However, Petitioner states that he does not agree with the \$10,000 that was added to the amount of the debt when it was transferred to be collected. As a practice, the Debt Collection Improvement Act of 1996 requires HUD to refer delinquent debts to the U.S. Department of the Treasury ("Treasury") for collection. 31 U.S.C. § 3711(g). By law, HUD is further required to charge interest and fees on past due debts. HUD Debt Collection Handbook, 1900.25 REV-5 § 2-5 (A). When HUD sends a debt to Treasury, Treasury is authorized to charge HUD a fee for its collection efforts. 31 U.S.C. § 3711(g)(6). But Petitioner, as the debtor, is also required to pay for debt collection fees charged by Treasury until the outstanding debt is paid in full. Payments made by the debtor are first applied to fees, then to interest, and then finally to the principal. 31 C.F.R. § 901.9(f). In this case, the evidence presented by the Petitioner has not established that the subject debt amount is in error, so the debt remains intact. As a result, the Tribunal finds that the collection fees associated with the subject debt must be included as required and paid by Petitioner.

Next, Petitioner claims that garnishment of his wages would cause him financial hardship. A showing of financial hardship does not invalidate a debt or release a debtor from a legal obligation to repay it. See In re Hongmei Zhang, HUDOHA No. 23-AF-0163-AG-093 (Dec. 3, 2024). However, if financial hardship is found, this Tribunal may downwardly adjust the garnishment amount to reflect the debtor's financial condition. 31 C.F.R. § 285.11(k)(3). To prove financial hardship, a petitioner must submit particularized evidence, including proofs of payment, showing that petitioner will be unable to pay essential subsistence costs such as food, medical care, housing, clothing, or transportation. See In re Lisa McDermott-Harris, HUDOHA No. 24-VH-0024-AG-017 (June 25, 2024); In re Amber Young, HUDOHA No. 23-AM-0024-

AG-014 (July 16, 2024); *In re* Derrick Byrd, HUDOHA No. 23-AM-0001-AG-001 (Sep. 30, 2024).²

In this case, the record fails to support Petitioner's claim of financial hardship. Petitioner submitted a copy of a completed Consumer Debtor Financial Statement that merely lists his monthly obligations but, without further documentation to prove his monthly essential expenses, this financial statement is insufficient to demonstrate that the garnishment would cause Petitioner financial hardship.

Accordingly, the Secretary may garnish up to 15% of Petitioner's disposable pay. Should Petitioner wish to negotiate repayment terms with HUD, this Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD.³ 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 such other amount as determined by the Secretary, not to exceed 15% of Petitioner's disposable pay. It is

² See also *In re* William Bogue, HUDOHA No. 22-VH-0094-AG-067 (Dec. 21, 2023); *In re* Lawrence Garrett and Wilma Garrett, HUDOHA No. 22-AM-0183-AG-119 (July 23, 2024); *In re* Elbony Rodriguez, HUDOHA No. 22-AM-0177-AG-115 (Sep. 25, 2024); *In re* Jannette M. Bush, HUDOHA No. 22-AM-0158-AG-106 (Aug. 30, 2024); *In re* Jamie Frampton, HUDOHA No. 22-AM-0146-AG-098 (Sep. 25, 2024); *In re* Nicole Spencer, HUDOHA No. 22-AM-0132-AG-090 (Nov. 15, 2023); *In re* Michele Fortenbaugh, HUDOHA No. 21-VH-0242-AG-142 (Jan. 27, 2023); *In re* Sandra S. May, HUDOHA No. 21-VH-0234-AG-136 (Feb. 8, 2023); *In re* George W. Speller, HUDOHA No. 21-VH-0110-AG-067 (Apr. 27, 2022); *In re* Arletha Smith, HUDOHA No. 21-VH-0096-AG-057 (Nov. 10, 2022); *In re* Brandy Galloway, HUDOHA No. 20-AM-0269-AG-169 (Nov. 28, 2023); *In re* Jennifer Tremper, HUDOHA No. 19-VH-0059-AG-012 (Aug. 7, 2019); *In re* Jeffrey Crouse, HUDOHA No. 18-VH-0217-AG-113 (Oct. 22, 2019); *In re* Shirley B. Brown, HUDOHA No. 18-VH-0110-AG-055 (Oct. 25, 2019); *In re* Thalia Kelly, HUDOHA No. 17-VH-0161-AG-043 (Nov. 16, 2018); *In re* Regina A. Hertenstein, HUDOHA No. 17-VH-0146-AG-036 (Mar. 5, 2018); *In re* Brian Watson, HUDOHA No. 17-VH-0142-AG-033 (Apr. 3, 2019); *In re* Catalina Lopez, HUDOHA No. 17-VH-0085-AG-025 (Apr. 4, 2018); *In re* Charles Tyson, HUDOHA No. 16-AM-0034-AG-006 (July 24, 2017); *In re* Nikolas C. Murdock, HUDOHA No. 15-VH-0029-AG-011 (June 22, 2016); *In re* Ray J. Jones, HUDOHA No. 84-1-OA (Mar. 27, 1985).

³ Treasury has authority to negotiate and accept settlement offers related to this debt and can be reached by contacting HUD Counsel assigned to this matter.

FURTHER ORDERED that the Order imposing the *Stay of Referral* of this matter to 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: 2025.01.08 13:57:16 -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.).