

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

In the Matter of:

MONICA FLORES,

Petitioner.

24-AF-0063-AG-051
(Claim No. 721021536)

February 5, 2025

DECISION AND ORDER

On December 6, 2023, Monica Flores (“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 April 3, 2003, Petitioner and her husband executed and delivered a Subordinate Note (“The Note”) in favor of the Secretary in the principal amount of \$5,401.06. 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 May 1, 2028, 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, or;

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

On or about July 7, 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. \$5,401.06 as the unpaid principal balance as of November 30, 2023;
- ii. \$81.00 as the unpaid interest on the principal balance at 3.0% per annum through November 30, 2023;
- iii. \$379.58 as the unpaid penalties and administrative costs on the balance through October 30, 2023; and
- iv. interest on said principal balance from December 1, 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 to Petitioner's 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.

HUD's attempt to obtain Petitioner's current income information was unsuccessful. Therefore, HUD proposes a wage garnishment repayment schedule of \$162.81 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* ("Secretary's Statement") together with a copy of the Subordinate Note signed by Petitioner and the Declaration of Gary Sautter, Acting Director, Asset Recovery Division, wherein Mr. Sautter 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 Lender, Borrower promises to pay the principal sum of Five Thousand Four Hundred One Dollars & Six cents (\$5,401.06), to the order of Lender." Further, the Note 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 submitted by

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).

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

In her *Request*, Petitioner claims she is ineligible for garnishment because she was involuntarily terminated from her last job, and has been employed in her current job for less than 12 months. However, Petitioner failed to provide proof of the involuntary termination and reemployment to support her claim. Without any evidence, this Tribunal is unable to determine the validity of the claim. It is axiomatic that assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past due or unenforceable. See *In re Hongmei Zhang*, HUDOHA No. 23-AF-0163-AG-093 (Dec. 3, 2024). As a result, Petitioner's claim fails for lack of proof.

Petitioner also states that Country Wide Home Loans requested the Note without her and her husband's knowledge. In response, the Secretary has produced a copy of the Note signed by Petitioner and her husband in 2003. The Secretary also submitted Mr. Sautter's Declaration, where he declared, under penalty of perjury, that Petitioner executed the Note in exchange for HUD advancing funds to pay a portion of Petitioner's primary mortgage.

Petitioner was afforded the opportunity to produce evidence in response to the *Secretary's Statement*, but did not do so.² Considering the evidence in the record, the Tribunal finds that HUD has met its burden to prove that Petitioner signed and agreed to the terms of the Note. The Tribunal further finds that Petitioner has failed to prove she did not know about the Note or that the Note is unenforceable.

Next, Petitioner claims that they paid the principal amount of the Note. To bolster her assertion, Petitioner submitted her Bank of America payment history showing that the principal amount of the Note was paid on April 23, 2003, to Bank of America. However, Petitioner has not shown that the Note in favor of the Secretary was paid off, nor has Petitioner provided any evidence to refute the existence of the debt. "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 Bank of America payment history shows a \$5,401.06 payment was applied to Petitioner's primary mortgage with Bank of America. This evidence fails to prove that Petitioner has paid any amount to the Secretary as required by the Note. Instead, this evidence corroborates the Secretary's assertion that HUD advanced funds in the amount of \$5,401.06 to Bank of America to pay a portion of Petitioner's primary mortgage. Absent proof that Petitioner has made payment in full to the Secretary pursuant to the Note, the Tribunal finds that the subject debt is past due and legally enforceable against Petitioner in the amount claimed by the Secretary.

² HUD's evidence was filed with the Tribunal and emailed to Petitioner on December 29, 2023. Pursuant to the *Notice of Docketing*, Petitioner was afforded the opportunity to file documentary evidence by January 25, 2024. As of the date of this *Decision and Order*, Petitioner has not made any submissions other than her *Hearing Request*.

Lastly, Petitioner asks the Tribunal to enter into a written repayment agreement to make monthly payments. This Tribunal is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of the HUD. The U.S. Department of Treasury has authority to negotiate and accept settlement offers related to this debt and can be reached at 1-888-826-3127.

Accordingly, the Secretary may garnish up to 15% of Petitioner's disposable pay or \$162.81 per month. 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 \$162.81 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
Date: 2025.02.05 10:51:27 -
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.).