

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

In the Matter of:

RENE OCHOA,

Petitioner.

Docket No. 24-AF-0067-AG-053  
(Claim No. 721020856)

February 28, 2025

**DECISION AND ORDER**

On December 12, 2023, Rene Ochoa (“Petitioner”) filed a *Hearing Request* seeking a hearing concerning the amount, enforceability, or payment schedule of a debt allegedly owed to the United States 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 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 executed and delivered a New Jersey Partial Claim Secondary Note (“Note”), dated November 19, 2020, in favor of the Secretary in the principal amount of \$8,872.56. The funds secured by the Note were paid by the Secretary to Petitioner’s primary lender to bring Petitioner’s primary note current and provide foreclosure relief to Petitioner.

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 January 1, 2043, 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 April 5, 2022, the Federal Housing Administration insurance on Petitioner's primary note was terminated, as the primary lender indicated that the primary note was paid in full. The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$2,814.99 as the unpaid principal balance;
- ii. \$0.56 as the unpaid interest on the principal balance at 1.0% per annum; and
- iii. interest on said principal balance from December 8, 2023, at 1% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated October 4, 2023, was sent to Petitioner. 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 was sent to Petitioner's employer on November 4, 2023. Petitioner's wages have not been garnished because of the Wage Garnishment Order.

HUD attempted to obtain Petitioner's current pay stub but was unsuccessful. HUD proposes a wage garnishment repayment schedule of \$78.21 per month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collection Standards, or 15% of Petitioner's disposable pay.

## **DISCUSSION**

HUD 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, may 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, HUD filed the *Secretary's Statement that Petitioner's Debt is Past Due and Legally Enforceable and Proposed Repayment Schedule* together with a copy of the Note 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 Note, signed and agreed to by Petitioner, state under "Borrower's Promise to Pay" that "[i]n return for a loan received from Lender, Borrower promises to pay the principal sum... to the order of the Lender." The Note further states 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 20410. Accordingly, the copy of the Note submitted by HUD under oath is sufficient to establish the existence and the amount of the debt owed by Petitioner.

Petitioner argues that he does not owe the full amount of the debt and that he does not owe the debt. To support his arguments, Petitioner submitted documents including an Essex

County Register Document Summary Sheet, a Quitclaim Deed, and a State of New Jersey Seller's Residency Certification/Exemption.

As noted *supra*, Petitioner may present evidence to demonstrate that no debt exists or that the amount of the debt is incorrect. See 31 C.F.R. § 285.11(f)(8)(ii). "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 documents submitted by Petitioner relate to the subject property. However, these documents do not prove that Petitioner made payments to HUD to satisfy the debt in this case or that HUD has otherwise released Petitioner of his liability to repay the debt. Absent any such evidence, this Tribunal finds that the subject debt is past due and legally enforceable against Petitioner in the amount claimed by HUD.

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.<sup>1</sup> 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, this 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

**FURTHER ORDERED** that the Order imposing the *Stay of Referral* of this matter to the United States Department of the Treasury for administrative wage garnishment is **VACATED**.

### SO ORDERED,

Digitally signed by: ALEXANDER  
FERNANDEZ-PONS  
Date: 2025.02.28 10:37:29 -  
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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.*).

<sup>1</sup> The United States Department of the 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.