

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

In the Matter of:

JOSE MURILLO,

Petitioner.

Docket No. 24-AF-0090-AG-061
(Claim No. 721021080)

April 1, 2025

DECISION AND ORDER

On December 22, 2023, Jose Murillo (“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 garnishment as a mechanism for the collection of debts 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 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 Promissory Note (“HUD Note”), dated September 29, 2021, in favor of the Secretary in the principal amount of \$94,136.22. The funds secured by the HUD Note were paid by the Secretary to Petitioner’s primary mortgage lender to bring Petitioner’s primary mortgage current and provide foreclosure relief to Petitioner.

The terms of the HUD 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 HUD Note. The HUD Note required payment on November 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 May 18, 2022, the Federal Housing Administration insurance on Petitioner's primary note was terminated, as the primary lender indicated that the mortgage was paid in full. The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$94,136.22 as the unpaid principal balance as of January 4, 2024;
- ii. \$637.81 as the unpaid interest on the principal balance at 1.0% per annum through January 4, 2024;
- iii. \$5,094.98 as unpaid penalties and administrative costs as of January 4, 2024; and
- iv. interest on said principal balance from January 5, 2024, at 1.0% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated October 17, 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 17, 2023. Petitioner's wages have been garnished three times for a total of \$1,108.76.¹

Petitioner provided a copy of his semi-monthly pay statement from [REDACTED] for the pay period ending on December 31, 2023. HUD proposes a wage garnishment repayment schedule of \$345.02 per semi-monthly pay period, or an amount equal to 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* together with a copy of the HUD 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 HUD 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... to the order of the Lender." The HUD 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,

¹ The most recent garnishment of \$297.18 is not reflected the amounts described above because the United States Department of the Treasury had not remitted the payment to HUD.

SW, Washington, DC 20410. Accordingly, the copy of the HUD 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 debt. To support his argument, Petitioner submitted a Seller(s) Final Closing Statement. 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 document submitted by Petitioner relates to the subject property. However, this document does not prove that Petitioner made payments to HUD to satisfy the debt in this case or that HUD has otherwise released Petitioner of his obligation 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.

Petitioner further claims that the proposed garnishment of his wages would cause him financial hardship. If financial hardship is found, this Tribunal may downwardly adjust the garnishment amount to reflect the debtor’s financial condition. 24 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 Ivan Gregg*, HUDOHA No. 24-AF-0047-AG-037 (Jan. 8, 2025). However, Petitioner has failed to provide proof of his essential expenses to support his financial hardship claim.² Without the required evidence, this Tribunal is unable to determine the validity of Petitioner’s financial hardship claim.

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, 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

² This Tribunal issued a *Notice of Docketing, Order, and Stay of Referral*, dated January 2, 2024, which required Petitioner to file proof of his expenses to support his financial hardship claim. Moreover, this Tribunal issued an *Order to Show Cause* on February 28, 2024, also requiring Petitioner to submit proof of his expenses. Petitioner did not provide the required proof.

³ 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.

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,
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: 2025.04.01 11:41:34 -04'00'

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.*).