

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

In the Matter of:

**Steward Edwards,**

Petitioner

Docket No. 23-VH-0143-AG-075  
(Claim No. 721020301)

October 30, 2024

**DECISION AND ORDER**

On August 10, 2023, Steward Edwards (“Petitioner”) filed a hearing request concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“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.

**JURISDICTION**

The administrative judges of this Court have been designated to adjudicate contested cases where the Secretary seeks to collect an alleged debt by means of administrative wage garnishment. This hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. § 17.81. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f) (8) (i). Thereafter, Petitioner must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f) (8) (ii). In addition, Petitioner may present evidence that the terms of any proposed repayment schedule are unlawful, would cause an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. Id.

**PROCEDURAL HISTORY**

Pursuant to 31 C.F.R. § 285.11(f) (4), on August 10, 2023, this Court stayed the issuance of a wage withholding order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”), 2). On October 10, 2023, the Secretary filed her *Statement* along with documentation in support of his position. In response, on November 30, 2023, Petitioner filed a *Statement* without supporting evidence and, subsequently, in response to a *Show Cause Order* issued by this Tribunal on September 13, 2024, Petitioner filed a 30-day *Request for Extension of Time* on October 14, 2024 after the due date had expired. This Tribunal

denied Petitioner's request for extension as untimely. This case is now ripe for review based upon the existing record.

### **FINDINGS OF FACT**

This is a debt collection action brought pursuant to Title 31 of the United States Code, section 3720D, because of a defaulted loan that was insured against non-payment by the Secretary.

The Secretary states that Stewart T. Edwards ("Petitioner") executed and delivered to the Secretary a Promissory Note ("Note") dated January 8, 2019, in the principal amount of \$12,510.41. As a means of providing foreclosure relief to Petitioner, HUD advanced funds to Petitioner's FHA insured first mortgage lender; and in exchange for such funds, Petitioner executed the Note in favor of the Secretary.

By terms of the Note, the amount to be repaid thereunder becomes due and payable when the first of the following events occurs (4)(A)[o]n October 1, 2046 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 instrument 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 February 15, 2022, the FHA Insurance on Petitioner's primary mortgage was terminated, as the lender indicated that the mortgage was paid in full. HUD's records indicate that the debt owed pursuant to the Note is enforceable and past due.

Accordingly, HUD has attempted to collect the amount due under the Note, but Petitioner remains indebted to HUD. Petitioner is justly indebted to the Secretary in the following amounts:

- a. \$12,510.41 as the unpaid principal balance as of July 31, 2023;
- b. \$62.52 as the unpaid interest on the principal balance at 1.0 % per annum through July 31, 2023;
- c. \$805.41 as unpaid penalties and administrative costs as of July 31, 2023; and
- d. interest on said principal balance from August 1, 2023, at 1.0 % per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated July 5, 2023 (the "Notice"), was mailed to Petitioner's last-known address. By the Notice and in accordance with 31 C.F.R. 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement acceptable to the U.S. Department of Treasury. However, to date, Petitioner did not enter into any such agreement as required.

Accordingly, the Note remains unsatisfied and the debt is enforceable against Petitioner. HUD's attempt to obtain Petitioner's current pay information was unsuccessful. Therefore, the Secretary proposes an administrative wage garnishment repayment schedule of \$371.62 per

month, which will liquidate the debt in approximately three years as recommended by the Federal Claims Collections Standards. Alternatively, the Secretary requests a repayment schedule in an amount equal to 15% of Petitioner's disposable income.

The Secretary further requests a finding that the Petitioner's debt is past due and legally enforceable; and authorization of the proposed repayment schedule.

## **DISCUSSION**

Petitioner contends, in his *Hearing Request*, that the subject debt does not exist. Even though the record sufficiently supports satisfaction of the primary mortgage, it lacks evidence that otherwise proves full satisfaction of the subject debt or proves that the subject debt no longer exists.

Petitioner first claims in his subsequent *Statement* that he "has formed a diligent search of his records and the official public records of the County related to the property address in the Note and has been unable to locate any such documents..." and that he "has been unable to locate any documents related to the debt claimed by Secretary." Petitioner is reminded that the *Notice of Docketing* issued earlier specifically stated that "Documents relating to this alleged debt are not in the possession of this Tribunal. Petitioner may request copies of these documents by emailing: [debtsericinghelp@hud.gov](mailto:debtsericinghelp@hud.gov); or writing to: OHA Appeals Coordinator, U.S. Department of Housing and Urban Development, Financial Operations Center, 52 Corporate Circle, Albany, NY 12203." So, while documents relating to the subject debt were accessible to Petitioner, there is no indication in the record that Petitioner pursued this option.

Petitioner next states that he was "unaware of such a letter and notice. Secretary did not provide any such documentation in violation of this Court's Order issued on August 10, 2023." There is no indication in the record that Petitioner has provided proof of a change of address. The address of record provided by Petitioner in his own *Hearing Request* has remained consistent throughout this proceeding. So, this Tribunal is unconvinced, without any additional evidence, that Petitioner was unaware of a letter and notice regarding the subject debt. Based on the claims presented by Petitioner in both instances, this Tribunal is unable to assess the credibility of both claims raised based on the evidence presented.

However, this Tribunal has determined that the Secretary's position is credible and persuasive. Case law precedent has established that "[i]f satisfaction of a senior deed of trust prevents a junior trust holder from enforcing a junior trust deed on the same real property, the junior trust holder may collect the debt, now unsecured, by initiating collection efforts based on the obligations in the loan note." Mitchell and Rosalva Fraijo, HUDBCA No. 99-C-CH-Y200 at 3 (March 20, 2000); John Bilotta, HUDBCA No. 99-A-CH-Y258 (December 29, 1999) (citing Kimberly S. (King) Thede, HUDBCA No. 89-4587-L74 (April 23, 1990)). The Note in this case is considered a separate and distinct debt for the primary mortgage. As a result, it is considered junior trust deeds that should be enforced. See Catherine Coley, HUDOA No. 16-VH-0147-AG-039 at 3 (July 24, 2017).

Petitioner's non-payment of the same would be considered a default. Petitioner has failed to produce evidence of a written release from HUD that released Petitioner from his obligations


under the Note or proves that the subject debt is non-existent. Without such evidence, the subject debt remains in default and Petitioner's obligation to pay said debt remains intact. So accordingly, the Court finds that the subject debt not only exists but is past due and enforceable against Petitioner.

### **ORDER**

Based on the foregoing, the Order issued, on August 10, 2023, that imposed the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is hereby **VACATED**.

The Secretary is authorized to seek 15% of Petitioner's disposable pay in satisfaction of the debt due and now enforceable.

SO ORDERED.



Vanessa L. Plall  
Administrative Judge

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**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.*).