

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

In the Matter of:

**Michael Barnard,**

Petitioner.

Docket No. 24-VH-0039-AG-030

Claim No. 721021116

February 7, 2025

**DECISION AND ORDER**

This proceeding is before the Tribunal upon a request for hearing (“*Hearing Request*”) filed on November 17, 2023, by Michael Barnard (“Petitioner”) concerning the existence, amount, or enforceability of a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD” or “the Secretary”). This hearing is authorized by the Debt Collection Improvement Act of 1996, as amended, (31 U.S.C. § 3720D) and applicable regulations.

**JURISDICTION**

The administrative judges of this Tribunal 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 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. *Id.* § 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 November 21, 2023, this Tribunal stayed the issuance of a wage garnishment order until the issuance of this written decision. (*Notice of Docketing, Order and Stay of Referral* (“*Notice of Docketing*”), at 2). Petitioner filed documentary evidence with his *Hearing Request*. On December 11, 2023, the Secretary filed her *Statement (Sec’y. Stat.)* along with documentation in support of her position. Petitioner has failed to comply with the Tribunal’s subsequent Order to file a Statement and additional evidence in support of his position. This case is now ripe for review.

## **FINDINGS OF FACT**

This debt collection action is 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.

According to the Secretary, Petitioner executed a Subordinate Note (“Note”) dated September 21, 2021, in the principal amount of \$23,459.88. 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 the terms of the Note, the amount to be repaid thereunder becomes due and payable on November 1, 2049, 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 Borrower as his or her principal residence.

The Secretary states that on or about June 15, 2022, Petitioner’s primary mortgage was paid in full, and the FHA mortgage insurance was terminated by the lender causing the Note to become due. HUD’s records indicate that the debt owed pursuant to the Note is enforceable and past due. Accordingly, HUD has attempted to collect the amounts due pursuant to the Note, but Petitioner remains indebted to HUD.

The Secretary asserts that Petitioner is justly indebted to HUD in the following amounts:

- (a) \$23,459.88 as the unpaid principal balance as of October 30, 2023;
- (b) \$117.24 as the unpaid interest on the principal balance at 1% per annum through October 30, 2023;
- (c) \$1,464.56 as the unpaid penalties and administrative costs as of October 30, 2023; and
- (d) interest on the principal balance at 1% per annum from October 31, 2023.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated October 17, 2023, was sent to Petitioner. In accordance with 31 C.F.R. § 285.11(e)(2)(ii) and the Notice, Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. However, to date, Petitioner has not entered into any such agreement.

Petitioner did not provide HUD with a copy of his current pay stub. Accordingly, the Secretary proposes a wage garnishment of \$695.00 per month to liquidate the debt in approximately three years, or, alternatively, 15% of Petitioner’s disposable pay. Based on the foregoing, the Secretary requests the Tribunal find Petitioner’s debt is past due and legally enforceable, and seeks authorization of the proposed repayment schedule.

## **DISCUSSION**


Petitioner asserts that he does not owe the subject debt because the proceeds from the closing that should have been applied to the debt were not applied, and the property associated with the debt was still in foreclosure. As support, Petitioner offers into evidence a copy of a Closing Disclosure form from Executive Associates Title.

After reviewing Petitioner's documentary evidence, the Tribunal has determined that Petitioner's burden of proof has not been met. While Petitioner is obviously aware that the subject debt exists, the Closing Disclosure form is insufficient as proof of payment. The Disclosure does not refer to the Note nor does it indicate that the subject debt was paid in full by the sales transaction. For Petitioner not to be held liable for the full amount of the subject debt as claimed, 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. Cecil F. and Lucille Overby, HUDBCA No. 87-1917-G250 (Dec. 22, 1986). In this case, Petitioner has failed to produce evidence of a written release or proof of valuable consideration paid to HUD in satisfaction of the debt. Therefore, the Tribunal finds that Petitioner's claim fails for lack of proof and further finds that Petitioner remains obligated to pay the debt so claimed.

## **ORDER**

Based on the foregoing, the Order issued on November 21, 2023 imposing the stay of referral of this matter to the U.S. Department of Treasury for an administrative wage garnishment is hereby **VACATED**.

The Secretary is authorized to seek collection of this outstanding obligation by means of administrative wage garnishment in the amount equal to \$695.00 per month, or, alternatively, 15% of Petitioner's monthly discretionary income.

SO ORDERED.  
  
Vanessa L. Hall  
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.*).