

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

In the Matter of:

NICHOLAS NANIA,

Petitioner.

Docket No. 24-VH-0369-AG-219
(Claim No. 721023962)

May 1, 2025

DECISION AND ORDER

On September 12, 2024, Nicholas Nania (“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 April 6, 2022, in favor of the Secretary in the principal amount of \$24,828.19. 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 April 1, 2052, 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 March 17, 2023, the Federal Housing Administration insurance on Petitioner's primary note was terminated, as the primary lender indicated that the primary mortgage was paid in full. The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- i. \$24,828.19 as the unpaid principal balance as of August 30, 2024;
- ii. \$626.86 as the unpaid interest on the principal balance at 4.0% per annum through August 30, 2024; and
- iii. interest on said principal balance from September 1, 2024, at 4.0% per annum until paid.

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings ("Notice"), dated August 28, 2024, 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. Petitioner has not entered into a repayment agreement with HUD.

HUD did not obtain a copy of Petitioner's current pay stub. Accordingly, HUD proposes a wage garnishment repayment schedule of \$705.00 per month,¹ 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 and Proposed Repayment Schedule* 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, 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. As noted *supra*, Petitioner may present evidence to demonstrate that no debt exists or that the amount of the debt is incorrect. See 31

¹ HUD states that a wage garnishment repayment schedule of \$705.00 per month will liquidate the debt in approximately three years, as recommended by the Federal Claims Collection Standards.

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). To support his argument, Petitioner submitted a PNC Bank Domestic Transfer document showing that a \$91,372.52 payment was made to pay off a mortgage. Petitioner argues that the \$91,372.52 payment satisfied all his outstanding obligations on the subject property. However, the documents provided by Petitioner do not prove that payments were made to HUD to satisfy the debt in this case or that HUD has otherwise released Petitioner from his obligation to repay the debt. Absent any such evidence, this Court 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 Court is not authorized to extend, recommend, or accept any payment plan or settlement offer on behalf of HUD.² 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 Court 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,



J. Jeremiah Mahoney
Chief 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.*).

² 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.