

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 09-0191
)
Yartizi Trouche Pabon,)
)
Petitioner)

Decision and Order

This matter is before me upon the request of the Petitioner, Yaritzi Trouche-Pabon, for a hearing in response to efforts of Rural Development, Respondent, to institute a federal administrative wage garnishment against her. On September 21, 2009, I issued a Pre-hearing Order requiring the parties to exchange information concerning the amount of the debt. The Hearing date was initially set to be December 1, 2009.

No contact phone number was in the file for Petitioner. On December 1, 2009, I issued an Amended Pre-Hearing Order re-setting the date to December 11, 2009. The Amended Pre-hearing Order was sent to Petitioner via FedEx without a signature requirement for delivery. On December 10, 2009, Ms Troche-Pabon called me using cell ¹ phone number 413-531- ##69 and stated that she has engaged an attorney and requested a postponement until January 2010. I denied the postponement request and reminded her that her attorney must enter his/her appearance, but that the hearing would not be postponed due to his/her schedule.

I issued a Second Amended Pre-Hearing Order re-setting the rescheduled

¹ Complete phone number maintained in USDA Records.

hearing to December 22, 2009. The Order was sent to Petitioner via FedEx with a "Direct Signature" requirement. FedEx advised that they attempted three deliveries leaving notes at the front door on each occasion. On December 22, 2009, the hearing was convened and Petitioner was reached via her cell phone (same as above) whereupon she advised that she was having a medical emergency with her children and again stated that she had engaged an attorney and she would have that attorney enter his/her appearance and provide USDA his/her contact information.

I issued a Third Amended Pre-Hearing Order via ordinary mail re-setting the hearing to January 5, 2009 at 11:30 E.S.T. When calls were placed to Petitioner at the appointed time and date and at the same cell number that she had used previously, she did not answer the call and a message was left on the cell phone.

I commenced the hearing with Mary Kimball and John Weaver representing Rural Development. The witnesses were sworn in.

RD had filed a copy of a Narrative along with exhibits RX-1 through RX-6 on October 19, 2009 with the OALJ Hearing Clerk and certified that it mailed a copy of the same to Petitioner.

Petitioner did not submit any documents or exhibits.

Petitioner owes \$46,446.55 on the USDA RD loan as of January 5, 2010, and in addition, potential fees of \$13,005.04 due to the US Treasury pursuant to the terms of the Promissory Note.

Findings of Fact

1. On July 26, 2004, Petitioner and Edgar Joel Melendez Santiago obtained a USDA Rural Development home mortgage loan for property located at *# **** St. St.

Georgetti Dev, Barceloneta, PR 006##.² Petitioner signed a promissory note for \$110,500.00 and a Rural Development Loan Guarantee. RX-1@ p. 1, 2.

2. On July 1, 2005, Petitioner defaulted on the note and was sent a Notice of Acceleration and Demand for Payment (Default) on the Promissory Note. Narrative and Ms. Kimball's testimony. At the time of the Default Notice, the balance due on the note was \$109,374.91. RX-2 @ p.8 of 10.

3. Petitioner and Mr. Santiago are jointly and severally liable for the debt.

4. The total debt attributed to Petitioner at the time of the foreclosure was \$124,496.50 which included the additional interest and protective advances. RX-2 @ p. 8 of 10, RX-3.

4. The lender (Citi Mortgage, Inc.) acquired the property at the foreclosure sale on August 13, 2007 for a bid price of \$73,666.67. Narrative, RX-2 @ p. 3 of 10.

5. The lender listed the property for sale on October 8, 2007 for \$99,900.00 and after the property did not sell, re-listed the property on January 29, 2008 for \$94,900.00. Narrative, RX-2 @ p. 4 of 10.

6. The Premier Properties Company of Puerto Rico did a broker's appraisal (BPO) dated September 17, 2007 valued the property as \$92,500.00. An Rural Housing Service (RHS) appraisal on April 2, 2008 valued the property as \$90,000.00 RX-2 @ 4 of 10.

7. The property was sold to a new purchaser for \$92,000 on June 30, 2008. Narrative, RX-3. The net proceeds of the sale after foreclosure costs, protective

²Complete address maintained in USDA records.

advances, and accrued interest was \$50,432.00. RX-2 @ p. 8 of 10.

8. After set-offs, the amount paid to Lender by RD under the Computer Loss Program is \$46,310.04. RX-2 @ p. 9 of 10.

9. The potential fees due U.S. Treasury pursuant to the Loan Guarantee Agreement are \$13,005.04. Ms. Kimball testimony, RX-5.

10. There was no testimony or exhibits from Petitioner regarding employment and RD has no knowledge that Petitioner is not fully employed.

11. Yartzi Trocuhe-Pabon is liable for the debt under the terms of the Promissory Note.

Conclusions of Law

1. Petitioner Yartzi Troche-Pabon is indebted to USDA's Rural Development program in the amount of \$46,446.55.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$13,005.04.

3. All procedural requirements for administrative wage garnishment set forth in 31 C.F.R. ¶ 285.11 have been met.

4. Petitioner is under a duty to inform USDA's Rural Development of her current address and employment circumstances.

5. Following compliance with 31 C.F.R. ¶ 285.11(j), the USDA Rural Development Agency (RD) is entitled to administratively garnish the wages of the Petitioner.

Order

For the foregoing reasons, provided the requirements of 31 C.F.R. ¶ 288.11(j) have been met, the wages of the Petitioner, Yaritzi Troche-Pabon, shall be subject to administrative wage garnishment up to 15% of Monthly Disposable Income.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's office.

JAMES P. HURT
Hearing Official

January 7, 2010