

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

AWG Docket No. 10-0042

In re: CYLISTA M. RHINEHART,  
F/KA CYLISTA M. SCHULTZ,

Petitioner

**DECISION AND ORDER**

This matter is before the Administrative Law Judge upon the request of the Petitioner, Cylista M. Rhinehart, for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On December 7, 2009, a Prehearing Order was entered to facilitate a meaningful conference with the parties on the manner that the case would be resolved and to direct the exchange of information and documentation concerning the existence of the debt and if established, the Petitioner's ability to repay the debt.

The Respondent complied with that Order and a Narrative was filed, together with supporting documentation. The Petitioner has provided financial information concerning her financial status to the Respondent which has now been reviewed by the Administrative Law Judge. At the time she requested a hearing, Ms. Rhinehart indicated that the loan had a co-signer who should be responsible for half the debt and further

indicated that while she was willing to set up a payment plan, she could not afford more than \$100 per month.

On January 27, 2010, a telephonic hearing was conducted. Cylista M. Rhinehart participated *pro se*. The Respondent was represented by Mary Kimball, Accountant for the New Program Initiatives Branch, USDA Rural Development (RD) and Gene Elkin, Legal Liaison for Rural Development, both from St Louis, Missouri. Diane Green, Secretary to the Chief Judge was also present.

The Narrative filed by the Respondent reflects that the Petitioner and Corey A. Schultz, her former husband, purchased a residence located at 811 W Jackson Street, Abingdon, Illinois by assuming an existing loan of \$31,820.20 from Farmers Home Administration (FmHA, the predecessor of RD) on the property and obtaining a new loan from FmHA in the amount of \$11,850.00. RX-1&3. Both notes were later modified to include unpaid principal, accrued unpaid interest and unpaid advances and fees. RX-2&4. The Schultzes defaulted on both loans and the property was sold in a foreclosure sale on September 18, 2007. A total of \$70,667.22 was due on both loans; however, the proceeds from the sale were only \$23,582.16. The amount due to RD exclusive of Treasury fees is \$53,935.22 due at this time. RX-5. Potential Treasury fees are assessed in the amount of \$15,101.86 making the balance due to Treasury \$69,037.08. RX-6.

The Petitioner's assertion that she should be liable for only half the debt is without merit.<sup>2</sup> Although the FmHA Form 1965-15 Assumption Agreement (RX-1) fails

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<sup>2</sup> The Petitioner's former husband was discharged from further liability for the debt by bankruptcy proceedings.

to expressly contain the joint and several provisions<sup>3</sup> found in the FmHA Form 1940-16 Promissory Note (RX-3), the Assumption Agreement requires assumption of the terms of the original note and the definition of borrower as being one or more persons as well as the joint and several liability provisions.

Upon examination of the Petitioner's financial condition which purportedly reflects expenses well in excess of the combined income of the Petitioner and her new husband, it is abundantly clear that the couple's current plight is largely self imposed. The questionable judgment demonstrated in incurring a major expense for a new 2010 automobile while still liable for significant school, multiple credit card debts and other existing loans is a strong disincentive to granting relief on hardship grounds.

On the basis of the record before me, and considering the testimony of the Petitioner concerning her current financial situation, the following Findings of Fact, Conclusions of Law and Order will be entered.

#### **Findings of Fact**

1. On November 16, 1994, the Petitioner, Cylista M. Schultz (now Cylista M. Rhinehart) and Corey A. Schultz, her former husband, purchased a residence located at 811 W Jackson Street, Abingdon, Illinois by assuming an existing loan of \$31,820.20 from Farmers Home Administration (FmHA, the predecessor of RD) on the property and obtaining a new loan from FmHA in the amount of \$11,850.00. RX-1&3.
2. Both notes were later modified to include unpaid principal, accrued unpaid interest and unpaid advances and fees. RX-2&4.

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<sup>3</sup> The standard Promissory Note recites: FOR VALUE RECEIVED, the undersigned (whether one or more persons, herein call "Borrower") **jointly and severally** promise to pay to the order of the United States of America..... RX-3.

3. The Petitioner and her former husband defaulted on both loans and the property was sold in a foreclosure sale on September 18, 2007. A total of \$70,667.22 was due on both loans; however, only \$23,582.16 was realized from the foreclosure sale. RX-5.
4. The Petitioner's former husband was discharged from further liability by virtue of bankruptcy proceedings.
5. Treasury offsets totaling \$990.23 were received, but were later reversed, leaving the amount due after application of the foreclosure proceeds unchanged. RX-5.
6. Potential Treasury fees have been assessed against the debt in the amount of \$15,101.86 making the balance due to Treasury \$69,037.08. RX-6.
7. The remaining unpaid debt is in the amount of \$69,037.08.

#### **Conclusions of Law**

1. The Petitioner, Cylista M. Rhinehart, formerly Cylista M. Schultz, is indebted to USDA Rural Development in the amount of \$53,935.22 for the mortgage loans extended to her and her former husband, further identified as Loan account number 1082197453. Potential Treasury fees in the amount of \$15,101.86 increase the amount due to \$69,037.08.
2. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.
3. The Respondent is entitled to administratively garnish the wages of the Petitioner.

#### **Order**

For the foregoing reasons, the wages of the Petitioner, Cylista M. Rhinehart, shall be subjected to administrative wage garnishment at the rate of 15% of disposable pay, or such lesser amount as specified in 31 C.F.R. § 285.11(i).

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

Done at Washington, D.C.  
January 29, 2010

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**PETER M. DAVENPORT**  
Acting Chief Administrative Law Judge

Copies to:     Cylista M. Rhinehart  
                  Mary Kimball  
                  Dale Theurer

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