

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWG Docket No.10-0130
)	
Pamela S. Ledwith,)	
)	
Petitioner)	Decision And Order

Pursuant to a Hearing Notice, I held a hearing in this proceeding by telephone, on May 11, 2010, at 1:00 PM Eastern Time, Petitioner, Pamela S. Ledwith, and Respondent, United States Department of Agriculture, Rural Development (USDA-RD), through its representatives, Gene Elkin and Mary E. Kimball, participated and were sworn. Both parties introduced documents pertaining to a home mortgage loan for property located at 64 Elm Street, Peru, NY 12927, that Respondent made to Petitioner and her husband, Theodore W. Ledwith, on December 11, 1996. On January 9, 2001, the Respondent sent Pamela S. Ledwith a letter that stated in part:

Because your debt is un reaffirmed, Rural Housing Service will not hold you personally liable for the debt. This means that in the event of default, Rural Housing Service will not seek a deficiency judgment and will look only to the security property for recovery of the debt.

The letter was precipitated by Theodore W. Ledwith's discharge in bankruptcy on July, 8, 1999 (RX-4), but was addressed to Petitioner, Pamela Ledwith. In reliance on the quoted paragraph, she assumed her liability for the loan was limited to her interest in the property that was the subject of the mortgage. She then assumed that all of her

obligations in respect to the mortgage debt ended when Respondent sent her a “Discharge of Mortgage”, dated April 5, 2002, that stated the mortgage on the property was “satisfied and discharged”. (RX-5). She followed the directions given her by Respondent and filed the Discharge of Mortgage with the County Clerk, on April 17, 2002, together with a \$16.00 filing fee. In 2006, the income tax refund check Petitioner expected to receive was withheld by the Treasury Department. Income tax refunds were also withheld in 2007 and 2009. On October 21, 2009, the Treasury Department’s Debt Management Services asserted an administrative wage garnishment claim against Petitioner on behalf of Respondent in the amount of \$30,164.92 that includes the amount that had been owed on the mortgage loan on April 10, 2002, when the loan and property were declared a valueless lien, plus various fees, and less the withheld income tax refunds.

Petitioner is presently employed as a part time mail carrier by the United States Post Office and earns less than a [REDACTED] per month.

The regulations that apply to Administrative Wage Garnishment by federal agencies to collect money from debtors, specify that in a hearing requested by the debtor:

...the debtor may present evidence that the terms of the repayment schedule are unlawful, would cause a financial hardship to the debtor, or that collection of the debt may not be pursued due to operation of law.

The facts developed in this proceeding show that Petitioner reasonably assumed that the debt underlying the home mortgage had ended in 2001, when she received a letter from Respondent to the effect. This assumption was reinforced in 2002, when she received a document from Respondent that pronounced the mortgage lien satisfied and discharged. Under the laws of New York, pursuit of a debt of this kind would be time-barred by the State’s six-year statute of limitations. Respondent asserts that a State

statute of limitation does not apply to the federal government in circumstances such as these. Implicit in statutes of limitation, however, is the doctrine of laches that precludes for reasons of fairness and equity, the pursuit of a claim that is first asserted after it has become stale through the passage of time. The neglect or omission to do what one should do warrants the presumption that one has abandoned the claim. *See, Shirley v. Van Every*, 159 Va. 762, 167 S.E. 345, 350; *Eldridge v. Idaho State Penitentiary*, 54 Idaho 213, 30 P.2d 781, 784.

Though it is questionable whether the doctrine of laches may be asserted against the federal government, the equitable concerns underlying the doctrine have bearing upon the requirement of the regulations that control wage garnishment by federal agencies that consideration is to be given to whether the collection of a debt through garnishment “would cause a financial hardship to the debtor”. (31 CFR §285.11(f)(8)(ii)). Respondent’s actions in 2001 and 2002 caused Petitioner to reasonably believe she no longer owed money to Respondent. Respondent did not initiate wage garnishment proceedings until 2009, seven years after it had pronounced the mortgage “satisfied and discharged”. By then Petitioner had moved from New York to Colorado and started a new life. These facts and the fact that Petitioner’s monthly gross income is less than [REDACTED], lead me to find and conclude that further collection of the debt would be inequitable, would cause Petitioner financial hardship and that collection of the debt may not be pursued due to operation of law.

Order

The relief sought in the petition is hereby granted, and the pending administrative wage garnishment to collect money from Petitioner’s disposable pay to satisfy a nontax debt asserted by the Respondent, USDA-RD is hereby barred and dismissed.

This matter is stricken from the active docket.

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

Dated: _____

Victor W. Palmer
Administrative Law Judge

Dated: March , 2010

Victor W. Palmer
Administrative Law Judge