

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 10-0166

In re: JEFFREY SMALL,

Petitioner

DECISION AND ORDER

This matter is before the Administrative Law Judge upon the request of Jeffrey Small 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 March 29, 2010, a Prehearing Order was entered to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt and setting the matter for telephonic hearing on May 25, 2010.

The Respondent complied with that Order and a Narrative was filed, together with supporting documentation on April 14, 2010. The Petitioner failed to file any documentation prior to the hearing, but on June 4, 2010 filed the Consumer Debtor Financial Statement. In the materials requesting the hearing, Mr. Small denied owing the debt. During the hearing on May 25, 2010, Mr. Small indicated that the residence had been conveyed to his ex wife as part of the terms of the divorce decree and that she had been ordered to assume the debt and hold him harmless. The loan documents filed with

the Narrative does indicate that the obligation was joint and several. The Narrative filed by the Respondent reflects that the property was sold in a short sale with less being realized from the sale than the amount of the obligation owed. Mr. Small indicated that he never had been given notice of his wife's default and was unaware of the short sale. Although the Narrative indicates that Mr. Small was sent a Notice of Acceleration (RX-3) and a letter indicating that he would be "still financing [sic] liable for any remaining debt (RX-6), review of that letter indicates that it was not sent to his address at the time, but rather was sent to the property address after he had moved from there. Accordingly, it appears that Mr. Small was not properly afforded an opportunity to cure any default or to retake possession of the property and assume the underlying obligation.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On January 17, 1992, the Petitioner and his then wife, Deborah Small received a home mortgage loan in the amount of \$52,500.00 from the United States Department of Agriculture (USDA) Rural Development (RD) for property located at 31601 Aberdeen Road, Wagram, North Carolina. RX-1.
2. The property was sold at a short sale on May 18, 1999 without giving proper notice to the Petitioner who was a joint obligor on the mortgage debt.
3. The notice of the short sale was not sent to the Petitioner's correct address and he never had notice of the proposed short sale or USDA's intention to hold him liable for any remaining deficiency.

Conclusions of Law

1. USDA Rural Development failed to properly give the Petitioner notice of the proposed short sale and in doing so failed to afford him the opportunity to cure the default or to retake possession of the residence and to assume the mortgage obligation.
2. By reason of the failure to give him proper notice, the Petitioner is **NOT** liable for the deficiency from the short sale and is **NOT** indebted to UDSA RD in any amount.

Order

For the foregoing reasons, the administrative wage garnishment proceedings and all debt collection actions against the Petitioner on account of the mortgage loan are **ORDERED TERMINATED.**

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

Done at Washington, D.C.
June 9, 2010

PETER M. DAVENPORT
Acting Chief Administrative Law Judge

Copies to: Jeffrey Small
Mary Kimball
Dale Theurer

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