

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWG Docket No. 10-0098
)	
Patricia Kurzejeski,)	
)	
Petitioner)	Decision

Pursuant to a Hearing Notice, I held a hearing by telephone, on April 27, 2009, at 10:00 AM Eastern local time. Petitioner participated with her attorney, Charles Talbot. Respondent, USDA Rural Development was represented by Gene Elkins, attorney, and Mary E. Kimball, Accountant for the New Programs Initiatives Branch at USDA Rural Development in St. Louis, MO.

The parties agree that Petitioner obtained a USDA RD home mortgage loan, on January 5, 1990, for property located at 2345 Routes 5 & 20, Stanley, NY 14561, and signed a promissory note for \$62,000.00. (RX-1). She defaulted on the loan and was sent a Notice of Acceleration letter by USDA Rural Development on February 3, 2000. (RX-3).

The sworn testimony of Petitioner and Respondent's representatives further establish that Respondent decided, in 2001, that the value of the property was so diminished that the institution of foreclosure proceedings would not be worth its costs, and Respondent declared the mortgage it held to be a valueless lien. At that time, the balance owed on the loan when unpaid interest, taxes and other expenses were added was \$95,978.22, reduced in turn by \$158.34, the total of two payments received from

Treasury. (RX-4). Presently, upon the addition of fees for the debt's collection, the amount sought to be recovered through garnishment, amounts to \$122,649.45. (RX-5).

On August 13, 2001, USDA RD filed with the Clerk's Office for the State of New York's Ontario County, a Discharge of Mortgage signed by a representative of USDA RD stating that the mortgage on the property owned by Petitioner: "has not been assigned and is satisfied and discharged and the United States of America does hereby consent that the same be discharged of record." (PX-1). Based on this fact, and the fact that Respondent made no collection efforts for 9 years from the Notice of Acceleration issued in 2000 until October 2009 when the Notice of Intent to Initiate Wage Garnishment Proceedings was issued, the debt should be considered discharged. Petitioner's attorney cites New York's Statute of Limitations, specifically NYS CPLR §213 which provides that legal actions to enforce a note secured by a mortgage must be commenced within six years. (PX-3).

Respondent asserts that its discharge of the mortgage which it concedes blocks it from filing suit in a New York State court, does not block it from using Federal administrative wage garnishment proceedings to collect the underlying debt. Such proceedings were not initiated until 2009 because Petitioner was unemployed until then. Respondent's attorney states there is supporting law for this position.

Petitioner testified that she is 59 years of age, and was disabled and receiving worker's compensation through 2009 when she settled her disability case and attempted to work again. She obtained a job at \$11.21 an hour, on basically a part-time basis, as a Residential Therapist for troubled youth. She held the position for 3 months until let go

because of her inability to perform some of the job's duties. She has not worked since and resides with a son.

Under these circumstances, wage garnishment proceedings are precluded in light of Petitioner's financial circumstances. She is unemployed and there are no wages available for garnishment. The administrative wage garnishment proceeding initiated against Petitioner is therefore dismissed. The dismissal is made without prejudice to Respondent's ability to fully brief in the future its contentions that it may pursue federal wage garnishment in circumstances where it either released a mortgage, or instituted wage garnishment proceedings after the time specified in a seemingly pertinent state statute of limitations. Inasmuch as those issues have not been fully briefed in this proceeding, no holding in their respect is intended and none should be inferred.

Dated: _____

Victor W. Palmer
Administrative Law Judge