

Quilla Meador AWG 10-0113 Quilla Meador AWG 10-0113 UNITED STATES

DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 10-0152
)
Cheryl Morin,)
)
Petitioner) **Decision**

Pursuant to a Hearing Notice issued on April 21, 2010, I held a hearing by telephone, on June 16, 2010, at 3:30 PM Eastern Time, in consideration of a Petition seeking to dispute Petitioner's obligation to pay a debt that Petitioner and her former husband incurred under four USDA FHA mortgage loans for property located at 2360 Main Street, Lancaster, MA 01523. Petitioner and her former husband had signed four promissory notes to secure the home mortgage loans given them by Respondent, USDA, Rural Development, which has not been fully repaid, and has resulted in the garnishment of Petitioner's wages for nonpayment of the amount still owed.

Petitioner did not participate in the hearing. Petitioner was instructed by the Hearing Notice to file: 1. completed forms respecting her current employment, general financial information, assets and liabilities, and monthly income and expenses; 2. a narrative of events or reasons concerning the existence of the alleged debt and her ability to repay all or part of it; 3. supporting exhibits with a list of the exhibits and a list of witnesses who would testify in support of her petition.. She was further instructed to contact my secretary, Ms. Marilyn Kennedy, and give Ms. Kennedy a telephone number where Petitioner could be reached at the time of the scheduled hearing. Petitioner did

give my Secretary such a telephone number but did not answer telephone calls to her at that number made at 3:00 PM, at 3:15 PM and at 3:30 PM on the day of the scheduled hearing. Petitioner also failed to comply with the other instructions and filed nothing in support of her assertion that she does not owe the debt that is the subject of the wage garnishment proceeding.

Respondent participated in the hearing through its representative, Mary Kimball, Accountant for the New Initiatives Branch, USDA Rural Development who gave sworn testimony showing that a balance of \$28,229.89 is owed on the loans that are the subject of the wage garnishment proceedings. There are also potential fees being assessed by Treasury for its collection efforts.

Under 31 C.F.R. § 285.11 (f)(2), a hearing on a Petition challenging wage garnishment may be, at the agency's option, either oral or written. An oral hearing may be conducted by telephone conference and is only required when the issues in dispute cannot be resolved by review of the documentary evidence 31 C.F.R. § 285.11 (f)(3).

An oral hearing was scheduled to hear and decide Petitioner's concerns. Petitioner never advised the Hearing Clerk, the Respondent, or this office that she could not be personally contacted on the day of the scheduled hearing at the telephone number she gave to my Secretary. Reasonable efforts were made on the day of the scheduled hearing to contact her, but were to no avail. Accordingly, the petition is being dismissed for Petitioner's failure to participate and present evidence or arguments to refute the documents provided by Respondent showing the existence of Petitioner's obligation to pay the debt still owed under the promissory notes she signed with USDA-RHS (RX-1).

The promissory notes were for \$33,500.00, \$8,580.00, \$20,000.00 and \$21,000.00, in respect to the four home mortgage loans USDA-FHA gave to Petitioner and her former husband for property located at 2360 Main Street, Lancaster, MA 01523 (Exhibit RX-1). . The property was sold at a short sale, on October 8, 2003. The total amount due prior to the sale was \$121,005.98. After the sale proceeds were posted, there was a remaining balance due of 38,205.98 (Exhibit RX-3). Respondent has received payments from Treasury which after the deduction of fees leaves a present debt balance of \$28,229.89. There are also potential collection fees that may be assessed by the United States Treasury Department. The Petitioner has provided no evidence showing that the present collection of any part of the debt would cause Petitioner undue, financial hardship within the meaning and intent of the provisions of 31 C.F.R. § 285.11. Therefore, the Petition is dismissed and the proceedings to garnish Petitioner's wages may be resumed provided the amount of wages garnished does not exceed 15% of her disposable income.

Petitioner is advised, however, that if she telephones the private agency engaged by Treasury to pursue the debt's collection, she might be able to settle the debt at a lower amount with lower payments.

Dated: _____

Victor W. Palmer
Administrative Law Judge