

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 10-0275

In re: LINDA J. IRWIN,

Petitioner

DECISION AND ORDER

A telephonic hearing was held in this matter on August 10, 2010. Participating were the Petitioner, Linda J. Irwin and Mary E. Kimball, Accountant for the New Program Initiatives Branch, USDA Rural Development, St. Louis, Missouri. Diane Green, Secretary to the Acting Chief Administrative Law Judge was also present.

During the hearing Rural Development was requested to check the County file to determine whether the closing instructions were still available and if so, to provide the same to the Petitioner and to file a copy with the Hearing Clerk. A negative report was requested in the event the instructions were not available.

On August 13, 2010, a revised Narrative was filed which was not responsive to what had been directed, but rather recited language on closing documents previously submitted. In the absence of evidence of the closing instructions sent to the attorney, it will be presumed that the payoff figure contained on the HUD Form 1 was what was given to the closing attorney.

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 February 16, 1983, the Petitioner received a home mortgage loan in the amount of \$39,400.00 from the Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) for property located in Pauls Valley, Oklahoma . RX-1.
2. In November 16, 1998, the Petitioner sold the property to David Butler for \$35,950.00. RX-6.
3. The HUD Form 1 reflected a payoff to USDA, Rural Development of \$32,192.01 on line 504, with no further amount due from the Seller on line 600. RX-6.
4. No closing instructions were produced.

Conclusions of Law

1. In absence of the closing instructions provided to the closing attorney, it will be presumed that the pay off figure contained on the HUD Form 1 was what was provided to him.
2. Linda J. Irwin is not indebted to USDA Rural Development in any amount at this time.
3. In absence of a proven indebtedness, the Respondent is NOT entitled to administratively garnish the wages of the Petitioner.

Order

For the foregoing reasons, the administrative wage garnishment proceedings against Linda J. Irwin shall be terminated and **DISMISSED** and the sum of \$213.59 collected from the Petitioner by Treasury shall be refunded to her.

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

Done at Washington, D.C.
August 20, 2010

PETER M. DAVENPORT
Chief Administrative Law Judge

Copies to: Linda J. Irwin
Mary Kimball
Dale Theurer

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue SW
Room 1031, South Building
Washington, D.C. 20250-9203
202-720-4443
Fax: 202-720-9776