

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 10-0177

In re: Michael L. Jeffcoat,

Petitioner

DECISION AND ORDER

This matter is before the Administrative Law Judge upon the request of Michael L. Jeffcoat 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 April 26, 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 a telephonic hearing on July 28, 2010.

At the hearing held on July 28, 2010, the Petitioner testified concerning the sequence of events that had transpired with the property. As is common in many of these cases, the Petitioner went through a divorce and as a result of which his ex wife was awarded the exclusive use, title and possession of the former marital residence which was purchased and financed by Farmers Home Administration (FmHA), now Rural Development (RD). Although the ex-wife was awarded title to the property in the divorce action, apparently no conveyance was ever prepared, as in August of 2000, the Petitioner's ex-wife contacted him indicating that she was selling the home and needed him to go to the closing which was scheduled for August 31, 2000.

Although FmHA mortgages typically contain provisions against alienation, the property was sold to Southern Investments Group, Inc. for the sum of \$2,000.00 and the agreement by the corporate purchaser to assume the mortgage. It is unclear if FmHA was ever notified of the transaction at the time or acquiesced to the transaction. In June of 2001,¹ Southern Investments Group conveyed the property to Kevin R. Linderman and David L. Howard, individuals who the documentary evidence indicates were principals of the corporate seller that had assumed the mortgage.

The Narrative filed by RD indicates that the conveyance to Linderman and Howard was a short sale which was agreed to by RD. The record is silent as to whether either the Petitioner or his ex-wife were ever notified of the default by the corporate purchaser of the property, of the pendency of the sale to the principals of the corporation, or were given an opportunity to cure any default. It is abundantly clear that RD's agreement to release their lien without either liquidating the property or enforcing the assumption provisions against the corporate purchaser operated to the financial detriment of the Petitioner and deprived him of the opportunity to mitigate his damages by timely legal action.

RD was directed to obtain the County file to determine whether additional information was contained therein which would be of assistance in determining a just resolution to this case. Despite the passage of more than four weeks, no additional information has been forthcoming. In view of the time constraints placed in such actions, further delay in entering a decision is not warranted. *See*, 31 C.F.R. 285.11(f)(10).

¹ The Petitioner's Narrative and supporting documentation indicates that the conveyance was June 21, 2001, whereas RD's Narrative indicates that the short sale occurred on June 18, 2001.

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 September 6, 1996, the Petitioner and his then wife, Selena A. Jeffcoat received a home mortgage loan in the amount of \$62,780.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) for property located in Gaston, South Carolina. RX-1.
2. On August 31, 2000, the Petitioner and his then ex-wife conveyed their interest in the property to Southern Investments Group, Inc. for the sum of \$2,000.00 and the agreement by the corporate purchaser to assume the mortgage. PX-2.
3. Southern Investments Group, Inc. subsequently defaulted on the mortgage. RD Narrative, p 1.
4. RD agreed to a short sale of the property in June of 2001 and the corporate purchaser of the property conveyed it to Kevin R. Linderman and David L. Howard, individuals who the documentary evidence indicates were principals of the corporate seller that had assumed the mortgage. PX-3.
5. As no evidence was produced to the contrary, it will be presumed that neither the Petitioner nor his ex-wife were ever notified of the default by the corporate purchaser of the property, of the pendency of the sale to the principals of the corporation, or were given an opportunity to cure any default.
6. RD's agreement to release their lien without either liquidating the property or enforcing the assumption provisions against the corporate purchaser operated to the

financial detriment of the Petitioner and deprived him of the opportunity to mitigate his damages by timely legal action.

7. Treasury offsets totaling \$15,319.10 exclusive of Treasury fees have been received and credited to the indebtedness. RX-3.

8. Although the Petitioner and his wife violated the alienation provisions of their mortgage, RD's actions which adversely affected the Petitioner's ability to mitigate damages are sufficient cause to require that the balance of the indebtedness be written off.

9. By reason of the foregoing, the Petitioner is no longer indebted to RD in any amount on account of the mortgage granted to him.

Conclusions of Law

1. There being no indebtedness to USDA Rural Development at this time, the Respondent is NOT entitled to administratively garnish the wages of the Petitioner.

2. Amounts previously collected by Treasury will not be repaid.

Order

For the foregoing reasons, the administrative wage garnishment proceeding are **ORDERED** terminated and this action is **DISMISSED**.

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

Peter M. Davenport
Chief Administrative Law Judge

August 26, 2010

Copies to: Michael L. Jeffcoat
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