

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Marilyn J. Prosper,) AWG Docket No. 10-0423
)
Petitioner)

Final Decision and Order

This matter is before me upon the request of the Petitioner, Marilyn J. Prosper, for a hearing in response to efforts of Respondent, USDA’s Rural Development Agency, Rural Housing Service, to institute a federal administrative wage garnishment against her. On September 27, 2010, I issued a Pre-hearing Order setting the date for the hearing and requiring the parties to exchange information concerning the amount of the debt.

Rural Housing filed a copy of its Narrative along with exhibits RX-1 through RX-7 on October 14, 2010. Ms. Prosper filed a copy of her Consumer Debtor Financial Statement on October 18, 2010. Ms. Prosper acknowledged receipt of Rural Housing’s Narrative and Exhibits. Rural Housing acknowledged receipt Ms. Prosper’s Consumer Debtor Financial Statement.

I conducted a telephone hearing on October 29, 2010. Rural Housing was represented by Mary Kimball who testified on behalf of the agency. Ms. Prosper represented herself. The witnesses were sworn.

On May 21, 1982, Ms. Prosper borrowed \$38,400.00 from USDA Farmers Home Administration to purchase her residence in Navasota, Texas. (RX-1, RX-2). By 1998,

Ms. Prosper became delinquent on the loan. In October 1998, Ms. Prosper re-amortized the loan, adding the amount delinquent to the outstanding principal, making the new principal amount owed \$43,838.45.

On June 18, 2002, Rural Housing sent Ms. Prosper a Notice of Default and on July 9, 2002, Rural Housing accelerated the loan notifying Ms. Prosper of its intent to foreclose. (RX-4). In February 2004, Ms. Prosper initiated Chapter 13 Bankruptcy proceedings. However, Ms. Prosper failed to pursue the case and it was dismissed, without any resolution, on August 16, 2004. (RX-5).

Rural Housing sold the property at a foreclosure sale on December 7, 2004. At the time of the sale, Ms. Prosper owed \$59,687.84 (\$39,025.59 in principal, \$15,753.42 in interest and \$4,908.83 in fees). Rural Housing received \$31,000.00 from the foreclosure sale. Subsequent collections bring the amount due to \$24,412.84. (RX-6). In addition, there are potential fees due Treasury of \$6,835.60 for a total amount due of \$31,248.44. (RX-7).

Based on the testimony during the hearing and the record before me, I conclude that Ms. Prosper owes \$24,412.84 on the USDA Rural Housing loan. In addition, there are potential fees of \$6,835.60 due the US Treasury for the cost of collection. In determining if garnishment is appropriate, I examine the Ms. Prosper's Consumer Debtor Financial Statement. Based on Ms. Prosper's testimony and her Consumer Debtor Financial Statement, Ms. Prosper's total income is approximately [REDACTED] per month in

Social Security disability payments. As such, I find that garnishment is not authorized at this time.¹

Findings of the Facts

1. On May 21, 1982, Ms. Prosper borrowed \$38,400.00 from USDA Farmers Home Administration to purchase her residence in Navasota, Texas.

2. In October 1998, Ms. Prosper re-amortized the loan, adding the amount delinquent to the outstanding principal, making the new principal amount owed \$43,838.45.

3. In February 2004, Ms. Prosper initiated Chapter 13 Bankruptcy proceedings. However, Ms. Prosper failed to pursue the case and it was dismissed, without any resolution, on August 16, 2004.

4. Rural Housing sold the property at a foreclosure sale on December 7, 2004. At the time of the sale, Ms. Prosper owed \$59,687.84 (\$39,025.59 in principal, \$15,753.42 in interest and \$4,908.83 in fees). Rural Housing received \$31,000.00 from the foreclosure sale. Subsequent collections bring the amount due to \$24,412.84. In addition, there are potential fees due Treasury of \$6,835.60 for a total amount due of \$31,248.44.

5. Ms. Prosper's income is approximately [REDACTED] per month in Social Security disability payments.

¹As discussed by Ms. Kimball at the hearing, if Ms. Prosper's disability income exceeds a certain level, it is subject to offset provisions. Those provisions are not the subject of this proceeding and are not governed by this order.

Conclusions

1. The Secretary of Agriculture has jurisdiction over the parties, Ms. Prosper and USDA Rural Development Agency, Rural Housing Service; and over the subject matter, which is administrative wage garnishment.

2. Petitioner Marilyn J. Prosper is indebted to USDA's Rural Development Agency, Rural Housing Service program in the amount of \$24,412.84.

3. In addition, Ms. Prosper is indebted for potential fees due to the US Treasury in the amount of \$6,835.60.

4. Ms. Prosper's financial circumstances are such that garnishment is not appropriate at this time.

Order

Until the debt is fully paid, Ms. Prosper shall give notice to USDA Rural Development Agency, Rural Housing Service of any changes in her mailing address; delivery address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).

USDA Rural Development Agency, Rural Housing Service, is not authorized at this time to proceed with garnishment. Rural Housing may review Ms. Prosper's financial circumstances on an annual basis and, if appropriate, seek garnishment at that time.

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

Done at Washington, D.C.
this 2nd day of November 2010

STEPHEN M. REILLY
Hearing Official