

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 10-0408

In re: Jennifer Gale Brown,
Petitioner

Decision and Order

This matter is before the Administrative Law Judge upon the request of Jennifer Gale Brown 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 September 27, 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 December 14, 2010.

The Respondent complied with that Order and a Narrative was filed, together with supporting documentation on October 29, 2010. Jennifer Gale Brown faxed the initial portion of her documentation to the Hearing Clerk on December 13, 2010 and the balance was sent by email received on December 14, 2010. The record in this case is extensive and contains a significant volume of material received from various parts of the United States Department of Agriculture (USDA) and Treasury through Open Records requests. The Petitioner asserts that she has been repeatedly given incorrect information by USDA employees and that she was under the mistaken impression that the debt had been written off and recalled by Treasury. The telephone record upon reliance is placed however fails

to corroborate any recall and merely recites the Petitioner's assertion without reflecting any final disposition of the claim. PX-29.

Thorough review of the record does reveal a lack of diligence on the part of USDA in failing to seek and apply a refund of unearned property insurance premium which was renewed shortly before the short sale. Contrary to the Petitioner's assertion that funds for the property taxes were in her escrow, review of the escrow balance reflects that less than \$100.00 remained after payment of the insurance premium due to the fact that the Petitioner made no loan payments after April of 2004. Accordingly her assertion that she should have received credit for the property taxes paid at the time of the short sale is in error.

The remaining issue in contention is the unauthorized assistance which USDA claims should be repaid in this case. Although the figure claimed due of \$5,054.19 is found in multiple parts of the record, the record is devoid of proof as to how that amount was arrived at or admissible factual evidence supporting any computation.

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 August 25, 1998, Jennifer Gale Brown received a home mortgage loan in the amount of \$88,500.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) for property located in Elgin, Texas. RX-1, 2.

2. The property was sold at a short sale on November 1, 2004 with proceeds realized from that sale in the amount of \$77,290.22, leaving a balance due of \$8,364.11, exclusive of the claim for unauthorized assistance in the amount of \$5,054.19. RX-6.
3. Treasury offsets totaling \$7,891.36 exclusive of Treasury fees have been received. RX-6.
4. USDA has failed to meet its burden of proof in establishing a claim for unauthorized assistance.
5. The Petitioner was entitled to some refund of unearned property insurance premium.
6. The amounts collected to date are equal to any amount due and the Petitioner is not indebted to USDA for the mortgage loan extended to her.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Jennifer Gale Brown is **NOT** indebted to USDA Rural Development for the mortgage loan extended to her.
3. Amounts collected from the Petitioner from Treasury offset need not be repaid.

Order

There no longer being any debt, the wages of Jennifer Gale Brown may **NOT** be subjected to administrative wage garnishment. All proceedings 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.

December 14, 2010

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Jennifer Gale Brown
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