

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 10-0412

In re: James Martin

Petitioner

Decision and Order

This matter is before the Administrative Law Judge upon the request of James Martin, 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 case for a telephonic hearing on December 15, 2010.

The Respondent complied with the Prehearing Order and a Narrative was filed, together with supporting documentation on October 6, 2010. Although the Petitioner attempted to file material with the Hearing Clerk, his efforts to do so prior to the hearing were unsuccessful.

At the request of the Petitioner, the December hearing was postponed and the telephonic hearing was ultimately held on January 31, 2011. At that hearing, the Petitioner participated *pro se* and the Agency was represented by Mary E. Kimball, Accountant for the New Program Initiatives Branch, Rural Development Centralized Servicing Center, United States Department of Agriculture, St. Louis, Missouri. The

Petitioner acknowledged that it looked like his signature on the Loan Guarantee Application (RX-1), but indicated that he had no recollection of signing the document and questioned why he would have done so over a month after the loan had closed. He also indicated that he had been informed that there would be no deficiency and testified that (as the judgment confirms) the deficiency had been waived. At the close of the hearing, both parties indicated that they would submit additional material.

The material submitted by the Petitioner confirms that the note holder expressly waived right to a personal or deficiency judgment. Paragraph 17, page 5 of the Judgment in *Chase Home Finance, LLC. vs. James C. Martin and Lendmark Financial Services, Inc.*, Case No. 08-CP-28-923, Court of Common Pleas, Kershaw County, South Carolina. Notwithstanding the note holder's waiver of any right to a personal or deficiency judgment against the Petitioner, JPMorgan Chase Bank, N.A., **an entity other than the note holder**, in contumely fashion submitted a loss claim under the loan guarantee and was paid \$36,980.01 by USDA.¹

The facts in this action may be considered illustrative of some of the more questionable practices of lenders and others in the financial industries responsible for precipitating the current economic difficulties confronting our country today. Initially, it is difficult to see any consideration for a guarantee executed over a month after a loan is closed. It is even more difficult to understand why the Agency would pay an entity other than the proper holder of a note under a purported guarantee.

¹ The record reflects that the original note and mortgage to Homeowners Mortgage Enterprises, Inc. dated April 28, 2005 was duly recorded in Book 1749, page 246. The note and mortgage was thereafter assigned to JPMorgan Chase Bank, N.A. by an assignment dated April 28, 2005 which was recorded in Book 1749, page 263 and then assigned again to Chase Home Finance LLC by assignment dated August 14, 2008 and recorded in Book 2407 at page 175, all in the Office of the Registrar of Deeds for Kershaw County. The foreclosure action was brought by the holder of then holder of the note, Chase Home Finance LLC.

On the basis of the record before me, nothing further having been received from the Petitioner, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On April 28, 2005, James Martin received a home mortgage loan from Homeowners Mortgage Enterprises, Inc. in the amount of \$92,857.00 for the purchase of property located in Lugoff, South Carolina.
2. Subsequent to obtaining the loan, without additional consideration, a loan guarantee agreement was executed, appearing to bear the Petitioner's signature.
3. In 2008, the Petitioner defaulted on the mortgage loan and foreclosure proceedings were initiated in the Court of Common Pleas for Kershaw County, South Carolina by Chase Home Finance LLC, then the holder of the note and mortgage.
4. In the foreclosure action, Chase Home Finance LLC expressly waived its right to a personal or deficiency judgment.
5. Thereafter, an entity not then the holder of the note, JPMorgan Chase Bank, N.A., submitted to USDA and was paid the sum of \$36,980.01. RX-2.
6. The residence was subsequently resold by the foreclosing party and USDA received an additional \$13,273.40. RX-4.
7. USDA referred this alleged debt of \$23,706.01 to Treasury and \$2,551.00 was collected from the Petitioner. RX-6.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. The Agency has failed in its burden of proof of establishing a debt in this matter.

3. The purported loan guarantee contained in the record was executed well after the closing of the loan and accordingly was without consideration.
4. The note and mortgage holder expressly waived its right to a personal or deficiency judgment and by the terms of its judgment was precluded from asserting any claim against the Petitioner.
5. USDA paid an entity under the purported guarantee agreement that was not then the holder of the note entitled to make such a loss claim.
6. Any amount collected from the Petitioner arising out of the purported guarantee was improper and should be refunded to him.

Order

For the foregoing reasons, no debt being established, the wages of the Petitioner may **NOT** be subjected to administrative wage garnishment. Any amounts collected from the Petitioner subsequent to foreclosure **SHALL** be refunded.

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

February 7, 2011

Peter M. Davenport
Chief Administrative Law Judge

Copies to: James Martin
Mary Kimball
Dale Theurer

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