

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0047

In re: Michael Mize,  
Petitioner

**Decision and Order**

This matter is before the Administrative Law Judge upon the request of Michael Mize 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 February 9, 2011, 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 March 17, 2011.

The Respondent complied with that Order and a Narrative was filed, together with supporting documentation on February 18, 2011. On March 1, 2011, the Petitioner submitted a Response and supporting documentation. At the time and date for the hearing, the Petitioner could not be reached and consistent with the language of the Prehearing Order will be decided on the record.

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 November 4, 1993, Michael Mize and Chastity Mize, then his wife received a home mortgage loan in the amount of \$43,500.00 from Farmers Home Administration (FmHA) now Rural Development (RD), United States Department of Agriculture (USDA), for property located in Alba, Texas. RX-1, 2.
2. In 1998, subsequent to the purchase of the residence, the Petitioner and his wife divorced and as part of the division of property in the divorce, possession of the residence was awarded to the Petitioner's then ex-wife. The ex-wife was to assume responsibility for the indebtedness and was by the terms of the decree to indemnify the Petitioner from any loss. Final Decree of Divorce, 114<sup>th</sup> Judicial District, Wood County, Texas dated August 17, 1998.
3. In 2000, while in sole possession of Chastity Mize, the mortgage loan was defaulted upon. As part of the foreclosure proceedings, notices of the default and acceleration were sent to the borrowers at the property address. RX-4, 5.
4. The Domestic Return Receipts in the record indicate that the mail was not in fact delivered to the Petitioner. *Id.*
5. The Petitioner accordingly never received notice of the default and acceleration of the loan, and was not provided an opportunity to cure the default,
6. While the Deed of Trust executed by the Petitioner contains a provision waiving any state law provision establishing a statute of limitations for bringing an action for a deficiency judgment, the record contains no evidence that any deficiency judgment was sought or taken against him.

7. Treasury offsets totaling \$6,993.38 exclusive of Treasury fees have been received.  
RX-6.

### **Conclusions of Law**

1. The Secretary has jurisdiction in this matter.
2. USDA Rural Development failed in its burden of proof of establishing that the Petitioner was given actual notice of the default, the acceleration of the loan or was given an opportunity to cure any default.
3. The Petitioner is not indebted to USDA Rural Development for the balance of the indebtedness stemming from the mortgage loan extended to him.
4. Any amounts collected by Treasury prior to the entry of this Decision and Order may be retained and need not be returned. The Petitioner has recourse against his ex-wife under the terms of the decree to recoup such amounts.
5. As personal liability for the debt has not been established and no deficiency judgment appears to have been sought, the wages of Michael Mize may **NOT** be subjected to garnishment.

### **Order**

For the foregoing reasons, these proceedings are terminated and the wages of Michael Mize shall **NOT** be subjected to administrative wage garnishment and the debt shall be recalled from Treasury.

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

March 17, 2011

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Peter M. Davenport  
Chief Administrative Law Judge

Copies to: Michael Mize  
Mary Kimball  
Dale Theurer

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