

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0102

In re: Randall Ostrom,
Petitioner

Decision and Order

This matter is before the Administrative Law Judge upon the request of the Petitioner 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 8, 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 case for a telephonic hearing on March 16, 2011.

The Respondent complied with the Prehearing Order and a Narrative was filed, together with supporting documentation on February 18, 2011. The Petitioner filed his Narrative [sic] and supporting materials on February 28, 2011. At the March 16, 2011 hearing, the Petitioner participated without the benefit of counsel. Appearing for the Respondent was Mary E. Kimball, Accountant for the New Program Initiatives Branch of USDA Rural Development, St. Louis, Missouri. Sworn testimony was received from the Petitioner and Ms. Kimball. As the Petitioner had not provided any financial information, the record was left open for seven days for him to provide that information. The supplemental material was filed March 22, 2011.

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 September 27, 2005, Randall Ostrom received a home mortgage loan from JP Morgan Chase Bank, N.A. in the amount of \$74,500.00 for the purchase of property located in Rhinelander, Wisconsin. RX-1, 2.
2. On September 22, 2005, prior to obtaining the loan, the Petitioner had executed a Loan Guarantee Agreement with Rural Development (RD), USDA in which he agreed to repay to RD any loss incurred in connection with the above loan. RX-3.
3. In 2008, the Petitioner defaulted on the mortgage loan and the residence was ultimately sold at foreclosure for \$46,000.00. RX-6.
4. Prior to the residence being foreclosed upon, the Petitioner had received a short sale offer in the amount of \$58,000.00; however, the offer was declined by the lender. Narrative [sic], PX-2.3.
5. The record is silent as to whether there was any deficiency judgment obtained.
6. Thereafter, although the Narrative filed by RD indicates otherwise, the records reflect that RD paid Chase Home Finance LLC, an entity not then the holder of the note, the sum of \$43,186.44 on the Loan Guarantee. RX-4.
7. USDA referred this alleged debt of \$43,186.44 to Treasury. RX-9.

8. There is no indication that any amounts have been received via the Treasury Offset Program.

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. USDA paid an entity under the guarantee agreement that was not then the holder of the note entitled to make such a loss claim.

Order

For the foregoing reasons, no debt being established, the wages of the Petitioner may **NOT** be subjected to administrative wage garnishment.

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

March 22, 2011

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Randall Ostrom
 Mary Kimball
 Dale Theurer

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