

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 11-0059

In re: Juanita Buendia
n/k/a Juanita Frizzell,

Petitioner

Decision and Order

This matter is before me upon the request of 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 January 11, 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. The hearing date was reset to May 13, 2011 by agreement of the parties.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-7 on January 31, 2011. The Petitioner filed four typed pages with her Petition (which I now label as PX-5) and financial information and exhibits PX -1 through PX-4 on February 8, 2011. Ms. Buendia raised issues relating to the existence of a hidden gas pipeline on her property and that the house was constructed in a flood prone area. Following the hearing, RD filed additional documentation at my request concerning the

field manual and/or field procedures then in effect. RX-8 and RX-11. Petitioner was present and Ms. Mary Kimball represented RD. The parties were sworn.

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 15, 1982, the Petitioner received a home mortgage loan in the amount of \$28,000.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) for construction of her home on a property located in Cameron County, Los Fresnos, TX 785##¹.

RX-1, RX-2.

2. A title insurance policy available to Ms. Buendia at the time of her loan gave her written notice of a pre-existing pipeline easement to Valley Pipeline on her property.

RX-7 @ p. 6 of 45.

3. Rural Housing Applicant Interview office procedures state that they “. . . will be reviewed in detail during a personal interview. . .” at paragraph 17.

INSPECTION OF PROPERTY: The borrower will be responsible for making inspections necessary to protect the borrower’s interest. . .

4. The FmHA instruction Manual at paragraph § 1924.9 Inspection of development work which was in effect at the time of the loan states, in part:

FmHA’s inspections are not to assure the borrower that the house is built in accordance with the plans and specifications.

RX-8 and RX-11.

¹ The complete address is maintained in USDA files.

5. The borrower became in default and a Notice of Acceleration was mailed on May 8, 2000. RX-4.
6. After the construction of her home, Ms. Buendia was required to pay for relocation of the gas line. PX-3.
7. After the construction of her home, she suffered flood damage and related mold problems and discovered that her septic system was not properly installed. PX-3.
8. RD declared the property as a valueless lien and released the lien on borrower's property; however the underlying debt remained as an unsecured debt. Narrative, RX-7 @ p. 1 of 45.
9. The principal loan balance prior to the valueless lien was \$27,127.55, plus \$27,146.94 for accrued interest, plus \$8,166.93 for fees for a total of \$62,441.42. Narrative , RX-5
10. Treasury offsets totaling \$4,883.91 exclusive of Treasury fees have been received. RX-5.
11. The remaining unpaid debt is in the amount of \$57,575.51 exclusive of potential Treasury fees. RX-6.
12. The remaining potential fees from Treasury are \$16,121.14.
13. Ms. Buendia states that she has been involuntarily unemployed since November 2011.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of \$57,575.51 exclusive of potential Treasury fees for the mortgage loan extended to her.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$16,121.14.
3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.
4. The Respondent is entitled to NOT administratively garnish the wages of the Petitioner.

Order

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment until she has been employed for one year. After one year, RD may re-assess the Petitioner's financial position.

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

June 9, 2011

James P. Hurt
Hearing Official

Copies to: Juanita Buendia
Mary Kimball
Dale Theurer

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