

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0225

In re: MARIA SARRIA,

Petitioner

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the request of Maria Sarria (“Petitioner”) for a hearing to address the existence or amount of a debt alleged to be due to the U.S. Department of Agriculture, Rural Development (“USDA-RD”; “Respondent”), and if established, the propriety of imposing administrative wage garnishment. By Order issued on February 23, 2012, the parties were directed to file and exchange information and documentation and the matter was set for a hearing to commence by telephone on March 20, 2012.

On March 2, 2012, Respondent filed a Narrative, together with supporting documentation, identified as exhibits RX-1 through RX-6. On March 12, 2012 Petitioner filed a narrative and supporting documents, identified herein as PX-1.

The hearing was held as scheduled, and the documents of both parties were admitted to the record. Testimony was given by Respondent’s representative, Michelle Tanner, of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri, and by Petitioner. I instructed Petitioner to file additional documentary evidence regarding her income in the form of W-2 tax forms and pay stubs and held the record open for receipt of those documents by not later than March 30, 2012. On March 29, 2012, Petitioner faxed correspondence directly to me, and not to

the Hearing Clerk, which informed me that her car had been vandalized¹. That document is hereby identified as PX-1 and is hereby admitted to the record. Petitioner also noted that she had “not received mail from [me] yet.” As of the date that this Decision and Order was issued, no additional documents have been filed by Petitioner.

On the basis of the entire record before me, the following Findings of Fact and Conclusions of Law and Order will be entered:

FINDINGS OF FACT

1. On February 1, 1995, Petitioner obtained a loan from USDA-RD in the amount of \$110,000.00 to finance the purchase of property on St. Thomas, Virgin Islands, evidenced by a Promissory Note and Real Estate Mortgage. RX 1.
2. Shortly after this transaction, St. Thomas experienced a devastating hurricane which impacted real property values.
3. Petitioner’s loan was accelerated and foreclosure proceedings were initiated, but on January 27, 1998, the property was sold to a third party for \$52,000.00. RX-2; RX-4.
4. Closing costs in the amount of \$10,186.16 were deducted from the sale proceeds, leaving \$41,813.85 applied against Petitioner’s account, the balance of which was \$78,544.97 for principal and interest at the time of the sale.
5. Petitioner testified that additional funds from the Small Business Administration (SBA) were sent to USDA-RD to apply to the account, and USDA-RD has acknowledged this. RD-3. (In addition, since Petitioner fell into default very shortly after taking out the loan, I infer from her account balance at the time of the sale that her account was credited for some funds from SBA.)

¹ Petitioner also asserted that the wage garnishment Order was suspended. Petitioner is hereby advised that suspension occurred because of her request for a hearing, and not by any action taken by me.

6. After the application of the proceeds from the sale of the property, Petitioner's loan account remained in the amount of \$36,731.12, plus interest of \$3,715.88. RX-2.

7. On March 25, 1999, USDA-RD notified Petitioner by mail that her account was referred to the Internal Revenue Service for offset of tax refunds. RX-5.

8. On April 12, 2002, the debt was referred to the United States Department of Treasury for collection as required by law.

9. Tax refund offsets and wage garnishment actions have reduced the debt to \$26,775.77, plus potential fees of \$7,497.22. RX-6.

8. Treasury, through its agent, issued a notice to Petitioner of intent to garnish his wages, and Petitioner timely filed a petition for a hearing.

10. Petitioner challenged the validity of the debt and provided some information about the circumstances giving rise to the debt and about her income, including documents showing that the property was sold free of any lien.

11. Petitioner failed to provide the additional information that I had Ordered at the oral hearing on March 20, 2012.

12. Petitioner filed a document asserting that her car was vandalized and that she had no transportation for several days.

13. Petitioner did not ask for additional time to file the required documents.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.

2. The sale of the property with clear title does not demonstrate that USDA-RD provided Petitioner with a satisfaction of the debt.

3. The satisfaction of a lien against real property is not tantamount to a satisfaction of a debt arising from a deficiency between the loan balance and amounts applied against the debt.

4. The balance remaining on Petitioner's account after application of proceeds from the short sale and funds from SBA constitutes a valid debt to the United States.
5. Petitioner is indebted to USDA-RD in the amount of \$26,775.77, exclusive of potential Treasury fees for the mortgage loan extended to her.
6. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.
7. Petitioner was not entirely forthcoming about her income and failed to provide supporting documents when directed to do so, although she credibly testified that her income fluctuates seasonally.
8. Petitioner credibly testified that she is issued W-2 forms and files tax returns, which is supported by Treasury's offset of refunds to the debt at Treasury for collection.
9. Petitioner asserted that she only learned of this debt upon notice of wage garnishment, but the record establishes that tax refunds had been intercepted in the past to offset the debt.
10. Pursuant to the regulations pertaining to debt collection by wage garnishment, Petitioner's necessary expenses² do not exceed her income, as best I can determine from her written statement of income and expenses. See, 31 C.F.R. §§ 900-904; 31 U.S.C. §3717.
11. Petitioner provided no evidence regarding the impact of damage to her vehicle, and since she stated that she "had been without transportation for couple of days", I infer that the financial impact is not permanent or severe. PX-2.
12. The Respondent is entitled to administratively garnish the wages of the Petitioner at the regulatory and statutory maximum, because the evidence fails to establish that garnishment would represent a hardship.

² Petitioner's income-generating rental home does not qualify as a necessary expense.

13. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment at this time.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in her address, phone numbers, or other means of contact.

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

So Ordered this 4th day of April, 2012 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge