

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 12-0280

In re: Violet Atkinson
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 April 10, 2012, I issued a Prehearing Order 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 Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-11 on April 10, 2012. Petitioner filed her financial statement on April 20, 2012 which I now label as PX-1. On April 24, 2012, at the time set for the hearing, both parties were available. Ms. Michelle Tanner represented RD. Ms. Atkinson was self-represented. The parties were sworn.

Ms. Atkinson has been employed for more than one year although she receives less than full time employment from her employer.

Following the hearing, Ms. Atkinson filed her payroll information which I now label as PX- 2, respectively.

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 June 24, 2008, Petitioner and Jeffrey Gripe obtained a loan for the purchase of a primary home mortgage loan in the amount of \$81,632.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase a home on a property located in Ladd, Illinois. RX-2.
2. Prior to signing the loan, the borrowers signed RD form 1980-21 (Loan Guarantee). RX- 1 @ p. 2 of 2.
3. The borrowers became delinquent. The loan was accelerated for foreclosure on/about February 2, 2010. Narrative, RX-4 @ p. 1 of 3, RX-7 @ p. 5 of 13.
4. After notice, the property was acquired by assignment on August 31, 2010 FmHA. Narrative, RX-4 @ p.2 of 3, RX-7 @ p.5 of 13.
5. The property was subsequently appraised on November 17, 2010 for \$61,900.00 "AS IS." RX-7 @ p. 6 of 13. The broker's price opinion on November 16, 2010 was that the value was \$ 59,900.00 "AS IS." RX-7 @ p. 6 of 13.
6. The property was listed for sale on March 18, 2011 "AS IS" for \$45,000.00. RX-7 @ p. 6 of 13.
7. The property was sold on April 15, 2011 for \$38,500.00. RX-6 @ p. 2 of 4.
8. RD adjusted the lender's claim for reimbursement downward \$12,573.72 due to negligence in marketing the property. RX-7 @ p. 12 of 13.

9. The borrowers owed \$81,027.85 for principal, plus \$9,321.53 for interest, plus \$2,045.25 for protective advancements, plus \$50.35 for interest on protective advance for a total of \$92,444.98 to pay off the RD loan. Narrative, RX-8.
10. In addition, under the loan guarantee program, borrowers owe an additional \$13,562.84 for fees and expenses for a grand total of \$106,007.82. RX-7.
11. USDA RD paid JP Morgan Chase \$49,093.61 for their loss under the loan guarantee program. Narrative, RX-8.
12. The remaining amount due of \$49,093.61 was transferred to Treasury for collection on April, 5, 2012. Narrative, RX-11 @ p. 4 of 5.
13. The potential Treasury collection fees are \$13,746.21. Narrative, RX-11 @ p. 4 of 5.
14. Violet Atkinson is jointly and severally liable for the remaining debt.
15. Ms. Atkinson has been employed for more than one year. Testimony, PX-1.
16. Ms. Atkinson raised the issue of financial hardship. I prepared a Financial Hardship Calculation.¹ There is one wage earner in the household. (PX-1). I calculated her gross pay at her straight time pay rate for a 35 hour week. Ms. Atkinson lives very modestly. Since under the Financial Hardship Calculation no wage garnishment was authorized (even though the wages utilized in the calculation were gross straight time wages) there was no need to further refine the calculation by apportioning the payroll stub taxes, health care costs, etc. between weekly total pay vs weekly straight time pay.

¹ The Financial hardship calculation is not posted on the OALJ website.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of \$49,093.61 exclusive of potential Treasury fees for the mortgage loan extended to her and under the loan guarantee program.
2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$13,746.21.
3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.
4. The Respondent is not entitled to administratively garnish the wages of the Petitioner at this time.

Order

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After twelve months, 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.

May 9, 2012

James P. Hurt
Hearing Official

Copies to: Violet Atkinson
Michelle Tanner
Dale Theurer

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