

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0335

In re: Brian Yancheson and
Danielle Yancheson,

Petitioner(s)

Decision and Order

This matter is before the Administrative Law Judge upon the request of Brian Yancheson, 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 20, 2012, 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 June 27, 2012.

The Respondent complied with the Prehearing Order and a Narrative was filed, together with supporting documentation on May 11, 2012. The file reflects material the Petitioner filed with his Request for Hearing, but no other materials.

A telephonic hearing was held on June 27, 2012. At that hearing, both Brian Yancheson and the co-borrower Danielle Yancheson participated *pro se* and the Agency was represented by Michelle Tanner, Appeal Coordinator, Rural Development Centralized Servicing Center, United States Department of Agriculture, St. Louis, Missouri. All parties giving testimony were placed under oath to provide sworn testimony. During the hearing the Yanchesons acknowledged that prior to the foreclosure

giving rise to the debt alleged to be due in this case, they had been in monetary default on the loan and entered into the loan modification agreement. Although the file suggests that no payments were made after the loan modification, Danielle Yancheson testified that they had made three payments before they became delinquent again as a result of Mr. Yancheson losing his job. She then although acknowledging the notices of publication in the file testified that the mortgage holder never notified them of the foreclosure proceedings but had the locks on the residence changed. When they contacted the bank, they were informed that nothing could be done unless they came up with a six figure amount.

The material submitted by the Petitioner does not contain documentation of judicial foreclosure proceedings which might provide some additional insight as to whether in fact the Yanchesons were personally served in the proceeding or whether the note holder pursued or expressly waived right to a personal or deficiency judgment. Nor does the file contain the loss claim by the putative note holder. RX-1, the Loan Guarantee Document identifies the lender as JP Morgan Chase bank, N.A. Similarly, the Note in RX-2 identifies the lender as the same entity. Subsequent documents in the same exhibit indicate that the Loan Modification (RX-2 @ 7 of 16) however bear the heading of Chase Home Finance LLC, a successor by merger to Chase Manhattan Mortgage Corporation. In the Loss Claim Summary (RX-6), the Loss Payee is identified as Chase Home Finance LLC. Although there is a space for the identification of the servicing lender RX-7 does not contain that information. Although there is an obvious similarity in the names of the above parties and a strong likelihood that they are all related identities, there is no evidence that the loss claim was paid to the appropriate holder in due course.

The facts in this action may be considered illustrative of some of the more questionable practices of lenders and others in the financial industries responsible for precipitating the current economic difficulties confronting our country today. Based upon only the information contained in the record, it is difficult to understand why the Agency would pay an entity other than the proper holder of a note under a purported guarantee.

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

Findings of Fact

1. On March 9, 2005, the Petitioner Brian Yancheson and Danielle Yancheson, a co-borrower received a home mortgage loan from JP Morgan Chase Bank, N.A. in the amount of \$173,400.00 for the purchase of property located in Sheridan, Michigan. RX-2.
2. Prior to obtaining the loan, on January 17, 2005 the Yanchesons applied for a loan guarantee from Rural Development, United States Department of Agriculture which guarantee was activated on March 7, 2005 by the loan from JP Morgan Chase Bank, NA. RX-1.
3. In 2008, the Yanchesons were in monetary default on the mortgage loan and a Loan Modification was executed, forestalling any pending foreclosure proceedings. RX-2.
4. In 2009, the Yanchesons again defaulted in the obligations under the original loan as modified, foreclosure proceedings were initiated and the property was sold at foreclosure to Chase. RX-3.

5. Chase subsequently resold the property at a price less than paid at the foreclosure (RX-5).

6. Thereafter, although no assignment of the note and mortgage appears in the record, an entity other than JPMorgan Chase Bank, N.A., submitted a loss claim under the Loan Guarantee to USDA and was paid the sum of \$124,001.88. RX-6-7.

7. USDA referred this alleged debt of \$124,001.88 to Treasury and \$4,356.00 was collected from the Petitioner. RX-10.

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 has not been established as the then holder of the note entitled to make such a loss claim.
4. Any amount collected from the Petitioner arising out of the purported guarantee was improper and should be refunded to him.

Order

For the foregoing reasons, no debt being established, the wages of the Petitioner may **NOT** be subjected to administrative wage garnishment. Any amounts collected from the Petitioner subsequent to foreclosure **SHALL** be refunded.

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

June 27, 2012

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Brian Yancheson
Danielle Yancheson
Michelle Tanner
Dale Theurer

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