

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 12-0367

In re: Christina J. Canovas,
Petitioner

Decision and Order

This matter is before the Administrative Law Judge 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 May 10, 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 matter for a telephonic hearing on July 24, 2012.

The Respondent complied with that Order and a Narrative was filed, together with supporting documentation on May 25, 2012. The Petitioner who is represented by Counsel, Kayla Dreyer, filed a Narrative, Memorandum of Law and Request for Interpreter with the Hearing Clerk on July 16, 2012. At the hearing held on July 24, 2012, both the Petitioner and Michelle Tanner, Appeals Coordinator, Rural Development, United States Department of Agriculture, St. Louis, Missouri testified.

In the Memorandum of Law, Petitioner raises affirmative defenses alleging that USDA failed to timely liquidate the property and in so doing failed to mitigate the loss. Examination of the sequence of events reflects however that the delay was the result of

the Petitioner filing for Chapter 13 relief under the Bankruptcy Act and the accumulation of additional debt during that period was the result of the Petitioner's failure to make regular payments reducing the amount owed. Laches, a defense based upon undue delay in asserting a legal right or privilege, has long been held to be inapplicable to actions of the Government. *United States v. Kirkpatrick*, 22 U.S. (9 Wheat) 720 (1824); See also, *Gausson v. United States*, 97 U.S. 584,590 (1878); *German Bank v. United States*, 148 U.S. 573, 579 (1893); *United States v. Verdier*, 164 U.S. 213, 219 (1896); *United States v. Mack*, 295 U.S. 480, 489 (1935).

Moreover, contrary to Petitioner's assertion that she was not afforded loss mitigation or moratorium relief, the file reflects that payment assistance packages were sent to her. RX-5. No provision currently exists under regulations to provide the services of an interpreter (See generally, 7 C.F.R. §3.62); however, given that the Petitioner is represented and she had the services of an interpreter, it is difficult to see how the Petitioner will be prejudiced by the government's failure to provide such services.

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 January 21, 2004, the Petitioner received a home mortgage loan in the amount of \$80,000.00 from Rural Development (RD) for property located in Los Fresnos, Texas. RX-1.
2. The loan was accelerated for foreclosure in June of 2006 for monetary default; however, the foreclosure action was held in abeyance when the Petitioner filed for relief under Chapter 13 of the Bankruptcy Act. RX-2, 3.

3. The Bankruptcy proceeding were subsequently dismissed on May 13, 2010 and the foreclosure proceeding were then resumed. RX-3.
4. The property was sold at foreclosure sale on July 6, 2010 and the property was acquired by RD for a bid of \$45,025.00. RX-4.
5. Prior to the sale, Petitioner owed \$106,340.64 for principal, interest and recoverable costs. After application of the funds, the remaining amount due was \$60,900.62. RX-6.
6. After receipt of Treasury offsets, the remaining unpaid debt is in the amount of \$53,625.62 exclusive of potential Treasury fees. RX-7.
7. The Petitioner's income is currently exceeded by her expenses. PX-7.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of \$53,625.62 for the mortgage loan extended to her.
2. The Petitioner is under a financial hardship at this time.
3. The Respondent is **NOT** entitled to administratively garnish the wages of the Petitioner.

Order

For the foregoing reasons, the wages of Petitioner **MAY NOT** be subjected to administrative wage garnishment at this time. Should Petitioner's financial position improve, RD may seek to recommence proceedings; however, any subsequent determinations of hardship will be made by Treasury.

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

July 24, 2012

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Kayla Dreyer, Esquire
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