

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0371

In re: Vanessa Johnson,
Petitioner

Decision and Order

This matter is before the Administrative Law Judge upon the request of the 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 case for a telephonic hearing on July 25, 2012.

The Respondent complied with the Prehearing Order and a Narrative was filed, together with supporting documentation on June 4, 2012. The Petitioner has neither filed any material subsequent to the Request for Hearing nor otherwise complied with the Prehearing Order. Nothing further having been received from the Petitioner, and there being no compliance with the Prehearing Order, the Petitioner will be deemed to have waived the right to a hearing and the matter will be decided upon the record before me.

On the basis of the record before me, nothing further having been received from the Petitioner, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On October 20, 2004, Vanessa Johnson and co-borrower John Vix received a home mortgage loan from Bell American Mortgage, LLC in the amount of \$122,100.00 for the purchase of property located in Webster, Wisconsin. RX-2.
2. On August 16, 2004, prior to obtaining the loan, the Petitioner and the co-borrower had executed a Loan Guarantee Agreement with Rural Development (RD), USDA in which she agreed to repay to RD any loss incurred in connection with the above loan. RX-1.
3. In 2008, the Petitioner and the co-borrower defaulted on the mortgage loan and the residence was ultimately sold for \$36,550.00. RX-3.
4. The record does not contain any foreclosure action pleadings or indicate whether a deficiency judgment obtained.
5. Thereafter, although the Narrative and RX-2 indicate that the Bell America Mortgage was sold to Chase Manhattan Mortgage Corporation, the records reflects that RD paid JP Morgan Chase Bank, N.A., an entity not established to be the then holder of the note, the sum of \$45,551.00 on the Loan Guarantee. RX-6, 7.
6. After application of amounts have been received via the Treasury Offset Program, the amount of \$27,222.00 remains allegedly due, exclusive of potential Treasury fees. 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 was not established by the record to be the then holder of the note entitled to make such a loss claim.

Order

1. For the foregoing reasons, no debt being established, the wages of the Petitioner may **NOT** be subjected to administrative wage garnishment.
2. All amounts collected from the Petitioner through the Treasury Offset Program subsequent to the foreclosure sale shall be refunded to her.
3. No debt having been established, issuance of a 1099 to the Petitioner reflecting forgiveness of a debt is **NOT** authorized.

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

July 25, 2012

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Vanessa Johnson
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Dale Theurer

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