

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Elva Garza, a/k/a)	Docket No. 12-0346
)	
Elva E. Garza,)	
)	
Petitioner)	Decision and Order

Appearances:

Mike P. Fortune, Esq., Fortune Law Office, S.C., Fond du Lac, Wisconsin, for the Petitioner Elva Garza, also known as Elva E. Garza; and

Michelle Tanner, Appeals Coordinator, United States Department of Agriculture, Rural Development, Centralized Servicing Center, St. Louis, Missouri, for the Respondent (USDA Rural Development).

1. The hearing by telephone was held on June 26 and August 21, 2012. The attorney representing Elva Garza, also known as Elva E. Garza, the Petitioner (“Petitioner Garza”), Mike P. Fortune, Esq.,¹ participated on her behalf.

2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and is represented by Michelle Tanner.

Summary of the Facts Presented

3. Petitioner Garza’s filings are admitted into evidence, including email sent July 16, 2012 by Mike P. Fortune, Esq., providing copies of the Summons and Complaint filed by Chase Home Finance, LLC, in Case Code 30404 in the Circuit Court, Dodge County,

¹ Mr. Fortune represents both Ms. Elva Garza and her co-borrower Mr. Javier Garza, but Mr. Garza is not a party to this case.

Wisconsin on January 7, 2010; letter over the signature of Mike P. Fortune dated May 25, 2012; email providing Petitioner's contact information filed May 8, 2012; and Petitioner's Hearing Request dated February 2, 2012, including letter over the signature of Mike P. Fortune dated March 2, 2012.

4. USDA Rural Development's Exhibits RX 1 through RX 10, plus Narrative, Witness & Exhibit List, were filed on May 24, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner.

5. Petitioner Garza bought a home in Wisconsin in 2007, borrowing \$148,700.00 to pay for it. RX 2. USDA Rural Development's position is that Petitioner Garza owes to USDA Rural Development **\$82,797.27** (as of May 23, 2012), in repayment of the United States Department of Agriculture / Rural Development / Rural Housing Service *Guarantee* (see RX 1, esp. p. 2; RX 10, esp. p. 2) for the loan made in 2007 ("the debt"). The loan was made by Mortgage Specialists LLC, a Wisconsin Limited Liability Company; subsequently sold to Trustcorp Mortgage Co. (RX 2, p. 4); and then sold to Chase Home Finance, LLC. The *Guarantee* remained in force.

6. Petitioner Garza's position is that Petitioner Garza owes **nothing** to USDA Rural Development and is **due a refund** for amounts taken from her, because there is no valid debt. [Garnishment was ongoing; and her income tax refunds were intercepted (*offset*). See RX 10, p. 1.]

7. Petitioner Garza proved that Chase Home Finance, LLC, in court filings, *waived* "judgment for any deficiency against every party who is personally liable for the debt" and "expressly (*waived*) its right to obtain a deficiency judgment against any defendant in this action". Accordingly, the Circuit Court Judge for Dodge County, Wisconsin entered "Findings of Fact, Conclusions of Law and Judgment" on February 16, 2010 that include (a) judgment in the amount of \$154,566.46 in favor of Chase Home Finance, LLC; (b) contemplation of a sheriff's sale, a six-month redemption period, and confirmation of the sale ending the Garzas' possession of the premises; and (c) NO DEFICIENCY JUDGMENT against the Garzas.

8. After careful review of all of the evidence, I agree with Petitioner Garza's position. There is **no valid debt** owed by Petitioner Garza to USDA Rural Development. The **amounts taken from Petitioner Garza's pay and from her income tax refunds shall be returned to her.**]

9. The *Guarantee* (RX 1) establishes an **independent** obligation of Petitioner Garza "I certify and acknowledge that if the Agency pays a loss claim on the requested loan to the lender, I will reimburse the Agency for that amount. If I do not, the Agency will use all remedies available to it, including those under the Debt Collection Improvement Act, to

recover on the Federal debt directly from me. The Agency's right to collect is independent of the lender's right to collect under the guaranteed note and will not be affected by any release by the lender of my obligation to repay the loan. Any Agency collection under this paragraph will not be shared with the lender." RX 1, p. 2.

10. USDA Rural Development did pay a loss claim on the requested loan to the lender. USDA Rural Development reimbursed the lender Chase Home Finance, LLC \$88,298.64 on March 30, 2011. RX 6, p. 11; RX 7. That amount, \$88,298.64, is what USDA Rural Development seeks to recover from Petitioner Garza under the **Guarantee**. RX 7, USDA Rural Development Narrative, and testimony.

11. I find that because of the actions of the lender Chase Home Finance, LLC during foreclosure, **waiving** the deficiency, the **Guarantee** is not enforceable. I find that, instead of benefitting from the **Guarantee**, as it easily could have, Chase Home Finance, LLC failed to protect the Government's interest during foreclosure and thereby rendered the loan note **Guarantee** unenforceable.

12. When the lender Chase Home Finance, LLC **waived** the deficiency in the Complaint filed January 7, 2010 in the Circuit Court, Dodge County, Wisconsin, Case Code 30404, instead of maximizing recovery, Chase Home Finance, LLC prevented USDA Rural Development from collecting the deficiency from Petitioner Garza. See Complaint attached to email sent July 16, 2012 by Mike P. Fortune, Esq. See also 7 C.F.R. § 1980.301, *et seq.*, especially 7 C.F.R. § 1980.308 and 7 C.F.R. § 1980.374.

13. Similarly, Chase Home Finance, LLC **waived** the deficiency in a case involving a **Guarantee** on a loan for a home in South Carolina. In *In re Ronald Haynes*, my colleague, Judge Janice K. Bullard, found that USDA Rural Development had failed to establish the existence of a valid debt.

See http://www.dm.usda.gov/oaljdecisions/120516_12-0272_DO_RonaldHaynes.pdf

Findings, Analysis and Conclusions

14. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Garza and USDA Rural Development; and over the subject matter (administrative wage garnishment, which requires determining whether Petitioner Garza owes a valid debt to USDA Rural Development).

15. USDA Rural Development relies on *Bank Mutual v. S.J. Boyer Construction, Inc., et al.*, decided by the Wisconsin Supreme Court on July 9, 2010, which shows that a lender that elects a shortened redemption period and thereby waives its right to collect any deficiency from the debtor (S.J. Boyer) under Wis. Stat. § 846.103(2), may still obtain a

judgment against the guarantors (the Boyers). *Bank Mutual* does not assist here, because the guarantors (the Boyers) did not seek recourse against the debtor (S.J. Boyer). <http://www.wicourts.gov/sc/opinions/08/pdf/08-0912.pdf> See especially, footnote 25 on page 44. Here, USDA Rural Development, the guarantor, does seek recourse against the debtor - - except that Petitioner Garza was no longer a debtor once the foreclosure was completed, because no deficiency could be established.

16. The lender Chase Home Finance, LLC during foreclosure *waived* the deficiency as to Petitioner Garza in the Complaint it filed on January 7, 2010 in the Circuit Court, Dodge County, Wisconsin, Case Code 30404. Consequently, Circuit Court Judge Andrew P. Bissonnette, Dodge County, Wisconsin, entered “Findings of Fact, Conclusions of Law and Judgment” on February 16, 2010 that included (in accordance with Wis. Stat. § 846.101(2)):

“IT IS BY THE COURT FOUND, DETERMINED AND ADJUDGED:

12. THAT NO DEFICIENCY JUDGMENT MAY BE OBTAINED AGAINST ANY DEFENDANT.”

Petitioner Garza was a Defendant. No deficiency judgment may be obtained against her.

17. By waiving its right to collect any deficiency from Petitioner Garza, the lender Chase Home Finance, LLC has prevented USDA Rural Development from collecting any deficiency from Petitioner Garza.

18. In general, USDA Rural Development may collect administratively pursuant to a *Guarantee*, even where NO judgment has been entered against a borrower and NO personal deficiency has been established. Here, however, Chase Home Finance, LLC by its filings in the foreclosure action has prevented collection of a deficiency, even administratively. In my opinion, Chase Home Finance, LLC, having done so, should not have been paid \$88,298.64, or anything, on its loss claim (RX 6, p. 11), and USDA Rural Development would do well to reclaim its money.

19. Petitioner Garza does **NOT** owe a valid debt to USDA Rural Development; Petitioner Garza does **not** owe the debt described in paragraphs 4, 5, 9 and 10.

20. Garnishment is **not** authorized. *Offset* of Petitioner Garza’s **income tax refunds** or other **Federal monies** payable to the order of Ms. Garza is **not** authorized.

21. Any amounts collected from Petitioner Garza, including collections from Treasury (*offsets*, which were intercepted income tax refunds due to Petitioner Garza; plus any

amounts collected through garnishment of Petitioner Garza's pay prior to implementation of this Decision) **shall be returned to Petitioner Garza.**

Order

22. USDA Rural Development shall cancel the debt as to Petitioner Garza.

23. USDA Rural Development, and those collecting on its behalf, shall **return to Petitioner Garza** any amounts already collected through garnishment or *offset*.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 28th day of August 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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