

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0337

In re: Brenda Bishop Morgan,
formerly Brenda B. Bishop,

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 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 matter for a telephonic hearing on June 28, 2012.

During the hearing, the Petitioner testified raising questions concerning the amount owed and the recovery from the foreclosure sale of the property. She was also allowed additional time to submit additional information and filed a Consumer Debtor Financial Statement which was received by the Hearing Clerk on July 6, 2012.

Rural Development indicated that the original sale conducted on February 13, 2003 was voided because of government error in the legal description of the property and the property was not resold until July 21, 2004. Because of that error, the Agency expressed willingness to waive any interest accruing between February 13, 2003 and July 21, 2004, the date of the second sale.

By Order dated August 31, 2012, the parties were directed to provide the following information:

1. Rural Development was to provide:
 - a. The payoff figure for the loan as of February 13, 2003.
 - b. A copy of any deficiency judgment entered by the United States District Court for the Northern District of Florida, Panama City Division in Docket No. 5:99-CV-127-SPM.
2. In light of her statement that she anticipated being unemployed as her job was ending, the Petitioner, Brenda Bishop Morgan, was to provide current information concerning her employment, if any, indicating if she was unemployed, and if so for how long.

Neither party having provided the information that they were directed to provide, 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 October 6, 1994, the Petitioner (then known as Brenda B. Bishop) received a home mortgage loan in the amount of \$40,250.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) for property located in Cottondale, Florida. RX-1.
2. The loan was accelerated for foreclosure on August 26, 1998 as a result of monetary default and a Judgment of Foreclosure was entered on November 2, 1999. RX-2, 4.

3. On November 24, 1999, Petitioner filed for protection under Chapter 13 of the Bankruptcy Act and the foreclosure proceedings were stayed.
4. The bankruptcy proceedings were dismissed on March 8, 2002, the foreclosure proceedings were resumed and the property was sold by the U.S. Marshal on the steps of the Jackson County Courthouse in Marianna, Florida on February 13, 2003. RX-4.
5. The sale by the U.S. Marshal was found to be defective by reason of an error in the property description and was voided. A revised Judgment of Foreclosure was entered on March 19, 2004 and the property was again sold on July 21, 2004. RX-4, 5.
6. The amount due as of February 13, 2003 will be found to be \$46,831.74. RX-5,
7. Funds received from the sale amounted to \$45,329.39. The additional amount of \$534.04 was received as an insurance refund; however, it appears that amount was advanced by USDA to keep the property insured and will not be credited to the Petitioner. RX-6.
8. After application of the proceeds of sale, the remaining unpaid debt is in the amount of \$1,502.35 exclusive of potential Treasury fees.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of \$1,502.35 for the mortgage loan extended to her.
2. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.
3. The Respondent is entitled to administratively garnish the wages of the Petitioner.

Order

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment at the rate of 15% of disposable pay, or such lesser amount as might be specified in 31 C.F.R. § 285.11(i).

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

November 2, 2012

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Brenda Bishop Morgan
Michelle Tanner
Dale Theurer

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