

United States Department of Agriculture
Before The Secretary of Agriculture

Docket No. AWG 13 – 0107

Cortney L. Barber
Petitioner

Decision and Order

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of debt alleged to be due, and if established, the terms of any repayment prior to the imposition of an administrative wage garnishment. On December 11, 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 debt, and setting the matter for telephonic hearing on January 29, 2013.

At the time and place set for the hearing, both parties were present. Giovanna Leopardi representative Rural Development (RD) and Miss Barber was self-represented. The parties were sworn.

In her petition for rehearing, Miss Barber requested to be considered for a financial hardship calculation. She also alleged that prior to the loan, RD had a responsibility to notify her about deficient construction that allowed the slab floor to buckle and crack, thus causing the house to be condemned for occupation. Her house was determined to be in a Class “B” flood zone which FEMA defines as between 100 year and 500 year flood region. RX-3 @ p. 10 of 11. There was no flood evidence presented. An inspection report dated June 2010 stated that the house was structurally sound. RX 7 @ 3 of 3. Petitioner stated that her geographical area suffered an “extra-ordinary” drought in the summer of 2011. RX-8 @ 10 of 19. She stated that after damages became visible, persons inspecting her house pointed out that the slab had no reinforcing steel. RX-8 @ 10 of 19. There is no evidence submitted opining the cause and effect of the lack of integral strength of the foundation slab by recognized experts. Publically available information suggests that extreme changes in moisture content within foundation soils can result in damaging settlement. <http://www.sciencedirect.com/science/article/pii/S0020722502002380>.

RD’s exhibit follows its guidelines which state that “the borrower will be responsible for

making inspections necessary to protect the borrower's interest. Agency inspections are not to assure the borrower that the house is built in accordance with the plans and specifications. The inspections create or imply no duty or obligation". RX-9 @ p. 1 of 3. RD's exhibits suggest that Ms. Barber owned the property as early as December 2, 2009. RX-6 @ p. 2 of 19. Ms. Barber has been employed more than one year as a Home Health Care worker. She has one outstanding personal loan. She has a Sallie Mae school loan and has prior medical expenses and no other garnishments. She lives modestly.

Findings of Facts

1. On August 10, 2010, petitioner Cortney Barber obtained a loan directly from USDA Rural Development in the amount of \$95,701. RX-1.
2. The Petitioner became delinquent and on/before March 27, 2012, the loan was accelerated due to monetary default. RX-2 @ p. 11 of 32.
3. The property was determined to be non-inhabitable by RD (RX-3 @ p. 10 of 11) and the house and lot were sold at the price of an empty lot for \$4,100 to a third-party purchaser in a short sale on/about March 27, 2012. RX-2 @ p. 11 of 33.
4. The Petitioner owed \$94,127.34 prior to the short sale. RX-4 @ p. 10 of 23.
5. After the proceeds from the short sale were applied, the Petitioner owed \$89,808.65. RX-4 @ p. 10 of 23.
6. A debt settlement application was completed by the Petitioner, but the settlement did not transpire. RX-4 @ p.22 of 23.
7. The debt was transferred to Treasury for further collection on July 9, 2012. The Petitioner currently owes \$89,808.65. RX-5 @ p. 2 of 3.
8. In addition, the Petitioner owes \$25,146.42 in potential collection fees. RX-5 @ p. 2 of 3.
9. The Petitioner submitted her financial statement and I prepared a Financial Hardship Calculation.¹ I also reviewed her debt settlement application financial statement.

¹ The Financial Hardship Calculation is not posted on the OALJ website.

Conclusions of Law

Petitioner is liable to the USDA Rural Development in the amount of \$89,808.65 for the mortgage loan extended to her.

In addition, Petitioner is liable to the USDA Rural Development in the amount of \$25,146.42 for potential collection fees.

All procedural requirements for administrative wage garnishment set forth in 31 CFR § 285.11 have been met. Pursuant to the Financial Hardship Calculation, Rural Development is not entitled to administratively garnish the wages of Petitioner at this time.

Order

For the foregoing reasons, the wages of petitioner shall be not subjected to administrative wage garnishment at this time. After one year, RD may reconsider the Petitioner's financial position.

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

February 21, 2013.

James P Hurt
Hearing Officer
copies to:

Cortney Barber
Giovanna Leopardi
Dale Theurer