

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0125

In re: AUDREY DAVIS,

Petitioner

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the December 14, 2012 request of Audrey Davis (“Petitioner”) for a hearing to address the existence or amount of a debt alleged to be due, and if established, the propriety of imposing administrative wage garnishment. By Order issued on January 23, 2013, the parties were directed to provide information and documentation concerning the existence of the debt and the matter was set for a telephonic hearing to commence on March 14, 2013.

The Respondent filed a Narrative, together with supporting documentation identified as RX-1 through RX-10. Petitioner filed a Consumer Debtor Financial Statement and earnings statement, identified as PX-1.

At the hearing, Petitioner represented herself and Giovanna Leopardi represented USDA-RD. I admitted the parties’ exhibits to the record

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 September 2, 2008, the Petitioner received a home mortgage loan from Idaho Housing and Finance Association (Lender) in the amount of \$78,571.00¹ to purchase residential real property located in Blackfoot Idaho. RX-2.

¹ This amount included a charge back of the Lender’s guarantee fee due to USDA-RD in the amount of \$1,571.41, which I have disallowed as improperly charged to Petitioner’s account..

2. Petitioner signed an agreement to repay USDA-RD for any loss paid to the Lender pursuant to USDA-RD's guarantee loan program. RX-1.
3. The loan fell into default and Lender foreclosed on the property, acquiring it for the sum of \$66,300.00 at a foreclosure sale held on July 1, 2010. RX-3.
4. The property was not sold by the Lender during the six months allowed by law, and a loss claim was paid to Lender based upon the Liquidation value.
5. The property subsequently was sold to a third party for \$47,000.00.
6. The amount due on Petitioner's account was \$95,621.73, consisting of principal, interest, advances, and costs. RX-6,
7. USDA-RD paid a loss claim to the Lender of \$46,934.15. RX-6; RX-7.
8. USDA-RD's offer to compromise the debt was not returned by Petitioner. RX-8.
9. Credits were applied, and Petitioner's account in the amount of \$45,234.15 was referred to the U.S. Department of Treasury ("Treasury") for collection. RX-9.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. The Lender improperly charged to the Petitioner a fee for the guarantee that Petitioner gave to reimburse USDA-RD, and that fee in the amount of \$1,571.41 is hereby credited against the account.
3. Petitioner is indebted to USDA Rural Development in the amount of \$43,662.74, exclusive of potential Treasury fees.
4. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.
5. Petitioner's necessary and fixed expenses severely limit her disposable income, which can not support wage garnishment.

6. Petitioner's financial condition represents a hardship within the meaning of 31 C.F.R. 285.11(k).

7. Treasury shall remain authorized to undertake all other appropriate collection action.

ORDER

For the foregoing reasons, Petitioner shall NOT be subjected to administrative wage garnishment at this time.

Petitioner's account must be adjusted to reflect credit for improperly charged fee of \$1,571.41.

Petitioner is encouraged to consult counsel about this debt or negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact.

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

So Ordered this 14th day of March, 2013 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge