

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 10-0222
)
Brenda L. Kot,)
)
Petitioner) **Decision**

Pursuant to a Hearing Notice, I held a hearing by telephone, on July 23, 2010, at 11:00 AM Eastern local time. Petitioner participated with her attorney, Daniel R. Norton. Respondent, USDA Rural Development was represented by Gene Elkins, attorney, and Mary E. Kimball, Accountant for the New Programs Initiatives Branch at USDA Rural Development in St. Louis, MO.

The parties agree that Petitioner and her former husband, Joseph A. Kot, obtained a home mortgage loan from Farmers Home Administration, (now USDA Rural Development), on March 13, 1986, for property located at 118 Kot Road, Johnson City, NY , and signed a promissory note for \$52,290.47. (RX-1). On January 16, 1990, Brenda Kot obtained a decree of divorce from Joseph Kot. Under the terms of the divorce decree, Joseph Kot retained sole title to the mortgaged property and assumed all liability and debt under the promissory note that is at issue. (PX-4). As of April 13, 1998, the loan was in default, and a short sale was approved for \$47,500.00. Closing was held on February 11, 2000, when the total amount of the debt was \$53,604.20. After closing costs were paid from the sale proceeds, there was a remaining deficiency of \$22,305.03. (RX-3). Since the sale, USDA Rural Development has received \$1,760.17 in collections from Treasury.

(RX-4). The debt for collection by Treasury is \$20,589.86 plus potential fees of \$5,765.16 or \$26,355. (RX-5).

Upon consummation of the short sale, USDA Rural Development caused a discharge of mortgage to be filed with the Broome County Court that was recorded on February 22, 2000. (PX-5). The discharge of mortgage was signed before a Notary by a representative of USDA Rural Development, and it stated that the mortgage on the property: "has not been assigned and is paid and the United States of America does hereby consent that the same be discharged." (PX-5). Based on this fact, and the fact that Respondent made no collection efforts for over 9 years from then until October 20, 2009 when the Notice of Intent to Initiate Wage Garnishment Proceedings was issued, the debt should be considered discharged. Petitioner's attorney cites 28 U.S.C. §2415 (a) which provides that "...every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless filed within six years after the right of action accrues...."

Respondent asserts that the nine year passage of time that would block a federal agency from filing suit, does not block a federal agency from using federal administrative wage garnishment proceedings to collect the underlying debt. However, federal administrative wage garnishment to satisfy delinquent nontax debt is governed by 31 C.F.R. § 285.11 that require consideration to be given to the financial hardship that collection of the debt would cause the debtor. (31 C.F.R. § 285.11(f)(8)(ii)). This is an ostensible requirement to consider equitable issues that may cause garnishment of the debtor's wages to no longer be appropriate. To allow Petitioner's wages to be garnished in a proceeding that was initiated nine years after she believed the debt to have been

released and discharged would be in every sense inequitable and contrary to doctrines of laches and estoppel that customarily apply when a debt is first pursued after such a long passage of time.

Under these circumstances, wage garnishment proceedings are precluded. The administrative wage garnishment proceeding initiated against Petitioner is therefore dismissed and Respondent is directed to return any sums that have been garnished to date to Petitioner. However, in accordance with 28 U.S.C. §2415 and 31 U.S.C. §3716, any sums that were obtained by means of administrative offset shall not be returned.

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

Dated: August 3, 2010

Victor W. Palmer
Administrative Law Judge