

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 10-0156

In re: KATHLEENMARIE B. PARKER,
f/k/a KATE ELLIOTT,

Petitioner

DECISION AND ORDER

This matter is before the Administrative Law Judge upon the request of Kathleenmarie B. Parker, formerly known as Kate Elliott 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 March 29, 2010, a Prehearing Order was entered to facilitate a meaningful conference with the parties as to how the case would be resolved and to direct the exchange of information and documentation concerning the existence of the debt.

The Respondent complied with that Order and a Narrative was filed, together with supporting documentation. The Petitioner filed her documentation on April 7, 2010. In the materials filed, Ms. Parker indicated that after consulting her attorney, she is of the opinion that collection of the debt is precluded by the laws of New Mexico.

The Narrative filed by the Respondent reflects that foreclosure proceedings were brought by the lender against the Petitioner and the property was sold with less being

realized from the sale than the amount of the obligation owed. The total amount due prior to the sale was \$54,554.78. Sale proceeds amounted to \$43,142.92. After application of the sale proceeds, the balance owed was \$11,411.86. USDA has received payments totaling \$8,457.14 (after deduction of Treasury fees of \$307.98), leaving the current balance owed of \$3,660.82, exclusive of potential Treasury fees.

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 April 16, 1993 Kathleenmarie B. Parker (then Kate Elliott) received a home mortgage loan in the amount of \$52,000.00 from the United States Department of Agriculture (USDA) Farmers Home Administration (now Rural Development (RD) for property located at 603 Corona, Truth or Consequences, New Mexico. RX-1.
2. The property was sold at foreclosure sale on July 17, 2001 with proceeds realized from that sale in the amount of \$43,142.92, leaving a balance due of \$11,411.86. RX-3.
3. USDA has received payments totaling \$8,457.14 (after deduction of Treasury fees of \$307.98). RX-3.
4. The remaining unpaid debt is in the amount of \$3,660.82, exclusive of potential Treasury fees . RX-3.

Conclusions of Law

1. Kathleenmarie B. Parker (f/k/a Kate Elliott) is indebted to USDA Rural Development in the amount of \$3,660.82 (exclusive of potential Treasury fees) 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 statute of limitations on collection of a debt under New Mexico law is pre-empted by the Supremacy Clause (Article VI, clause 2) of the United States Constitution and the 2008 Farm Bill.
4. The Respondent is entitled to administratively garnish the wages of the Petitioner.

Order

For the foregoing reasons, the wages of Kathleenmarie B. Parker 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.

Done at Washington, D.C.
May 20, 2010

PETER M. DAVENPORT
Acting Chief Administrative Law Judge

Copies to: Kathleenmarie B. Parker
Mary Kimball
Dale Theurer

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue SW
Room 1031, South Building
Washington, D.C. 20250-9203
202-720-4443
Fax: 202-720-9776