

**UNITED STATES DEPARTMENT OF AGRICULTURE**

**BEFORE THE SECRETARY OF AGRICULTURE**

In re: ) AWG Docket No. 10-0129  
 )  
Paul Laroche, )  
 )  
Petitioner )

**Interim Decision and Order**

This matter is before me upon the request of the Petitioner, Paul D. Laroche, for a hearing in response to efforts of Respondent, USDA Rural Development (RD), to institute a federal administrative wage garnishment against him. On March 18, 2010, I issued a Pre-hearing Order requiring the parties to exchange information concerning the amount of the debt. The hearing date of May 17, 2010 was continued until May 24, 2010 by agreement of the parties.

I conducted a telephone hearing at the scheduled time. USDA Rural Development Agency (RD) was represented by Mary Kimball and Gene Elkin, Esq. who testified on behalf of the RD agency.

Petitioner was present and was represented by Richard Pennington, Esq.

The witnesses were sworn in. RD had filed a copy of a Narrative along with exhibits RX-1 through RX-6 on April 30, 2010 with the OALJ Hearing Clerk and certified that it mailed a copy of the same to Petitioner. On June 4, 2010, RD filed a post-hearing Additional Narrative and Exhibits RX-7 through RX-10 in response to issues raised by Petitioner during the hearing. Petitioner filed his Narrative (5 pages) Exhibits PX-1 (2 pages), PX-2 (5 pages) on/about May 21, 2010.

Mr. Laroche stated that he received RD's initial Exhibits and witness list. Mr. Laroche did not respond to RD's Additional Narrative and Exhibits.

Petitioner's position is that he should not be obligated to pay the full current debt because RD endangered his equity by extending additional credit to his estranged/divorced wife without his consent: (a) on or about March 25, 1992, (b) again on February 2, 1995, (c) and again on April 12, 1997. RD's position is that Mr. Laroche's joint and several obligation in the July 17, 1987 Promissory Note continues to be binding on him despite RD's failure to obtain his concurrence with the three additional reamortizations.

I find that Paul D. Laroche is liable for the deficiency (if any) on the July 17, 1987 Promissory note as of the date of the March 25, 1992 Reamortization.

### **Discussion**

Under the regulations, the Agency has the burden to **“prove the existence or amount of the debt.”** 31 CFR 285.11(f)(8)(i). Initially, I find that RD's foreclosure evidence of the balance due is only relevant for the foreclosure on November 1, 2000. RX-5. I also find that the three additional typed paragraphs below the signature lines on RX-1@ p. 2 of 5 were added after the original instrument was signed on November 26, 1980 and those three paragraphs are not themselves binding on Mr. Laroche. Mr. Laroche signed the July 17, 1987 Promissory note as an accommodation party - not a spouse as he had formerly done. RD would have been on notice to make further inquiry as to Leslie Larouche's marital status and her individual current household income. Upon the signing of the March 26, 1992 Reamortization agreement, RD failed to inquire as to the former spouse's agency authority to sign on behalf of her ex-husband. RD has utterly failed to show Leslie Laroche had valid agency authority to bind Paul D. Laroche in a new commitment on/after March 26, 1992.

Petitioner has challenged the existence and amount of the debt. I find that RD has not yet met its initial burden establishing of the “debt,” however, I am not willing to discharge Mr. Laroche's joint and several obligation under the July 17, 1987 Promissory note until RD has had

an opportunity to determine the deficiency (if any) as of the closing date of March 26, 1992.

### **Findings of Fact**

1. On November 26, 1980, Paul C. and Leslie D. Laroche obtained a USDA FmHA home mortgage loan for property located at 2## \*\*\*\*\* Union St. Petersborough, NH 034\*\*.<sup>1</sup> The borrowers signed a Promissory note (Account # 5442484) for \$49,000. RX-1 @ p. 1 of 5.

2. Borrowers thereafter added a second mortgage to the property subject to the first mortgage (PX-2 @ 5 of 5) and signed a Promissory note (Account # 5442497) on July 17, 1987 for \$32,750.00. Mr. Laroche signed the Promissory note as an accommodation party and not as a spouse. RX-1 @ p. 5 of 5.

3. The property was remortgaged by Leslie Laroche, individually, on March 24, 1992 and RD added additional burden to the mortgaged property by capitalizing the accrued interest of \$2,232.06 resulting in a larger debt secured by the property. RX-7 @ p. 1 of 6.

4. The property was again remortgaged by Leslie Laroche, individually, on February 26, 1995 and RD added additional burden to the mortgaged property by capitalizing the accrued interest of \$10,092.03 resulting in a larger debt secured by the property. RX-7 @ p. 3 of 6.

5. The property was again remortgaged by Leslie Laroche, individually, on April 26, 1997 and RD added additional burden to the mortgaged property by capitalizing the accrued interest of \$609.45 resulting in a larger debt secured by the property. RX-7 @ p. 5 of 6.

6. Leslie Laroche defaulted on the note on August 7, 2000 and RD foreclosed on the debt. RX - 3. The total amount due on all loans \$135,047.33. The amount of funds received by RD from the foreclosure sale on November 1, 2000 was \$92,200.00. RX-5.

7. After the sale, Treasury recovered additional net funds of \$6,018.09 and \$618.55. Narrative as revised, RX-5.

8. The potential fees due U.S. Treasury pursuant to the Assumption Agreement(s) are \$10,108.15. Narrative, RX-6.

---

<sup>1</sup>Complete address maintained in USDA records.

9. RD has not clearly shown the delinquency status (if any) on the loans on March 24, 1992 .

### **Conclusions of Law**

1. Petitioner Paul Laroche is indebted to USDA's Rural Development program under the terms of the July 17, 1987 Promissory note, but the amount is unknown.

2. In addition, Petitioner may be indebted for potential fees to the US Treasury but the amount is unknown.

3. All procedural requirements for administrative wage garnishment set forth in 31 C.F.R. ¶ 285.11 have been met.

4. Petitioner is under a duty to inform USDA's Rural Development of his current address, employment circumstances, and living expenses.

5. RD may not administratively garnish Petitioners wages until the final Decision in this matter.

## Order

1. The requirements of 31 C.F.R. ¶ 288.11(i) & (j) have been met.
2. The Administrative Wage Garnishment against this debtor is suspended at this time.
3. RD may submit additional documents and narrative to show the delinquency status (if any) of the several loans immediately prior to the March 26, 1992 Reamortization and prepare an account of its findings. RD shall serve its additional accounting on all parties.
4. This matter shall be continued until RD has submitted its accounting requested above.
5. Petitioner shall have 15 days following the receipt of RD's accounting to respond.
6. Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's office.

---

JAMES P. HURT

Hearing Official

July 31, 2010