

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 10-0161
)
Francine Draxton,
f.k.a. Francine Trueworthy)
)
Petitioner)

Final Decision and Order

This matter is before me upon the request of the Petitioner, Francine Draxton, f/k/a Francine Trueworthy for a hearing in response to efforts of Respondent, USDA Rural Development “RD”) to institute a federal administrative wage garnishment against her. 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 June 3, 2010 was continued until June 8, 2010 by agreement of the parties.

I conducted a telephone hearing at the scheduled time on June 8, 2010. USDA Rural Development Agency (RD) was represented by Ms. Mary Kimball and Gene Elkin, Esq. who testified on behalf of the RD agency.

Ms. Draxton was present and was self represented.

The witnesses were sworn in. RD had filed a copy of a Narrative along with exhibits RX-1 through RX-7 on May 17, 2010 with the OALJ Hearing Clerk and certified that it mailed a copy of the same to Ms. Draxton. On July 2, 2010, RD filed a post-hearing Additional Narrative and Exhibit RX-8 in response to issues raised by Ms. Draxton during the hearing. On August 1, 2010 RD filed an Additional Narrative and Exhibits RX-9, RX-9A, and RX-10 at my request.

Ms. Draxton filed her Exhibits PX-1 (4 pages), PX-2 (6 pages), PX-3 (5 pages). Ms. Draxton filed a response to RD's Additional narrative on July 13, 2010 which included a two page typed Narrative. Ms. Draxton did not respond to RD's Additional Narrative or RX-9, RX-9A or RX-10 (August 1, 2010).

Ms. Draxton's March 8, 2010 request for Hearing stated "I do not owe the debt" and "I have been discharged from the mortgage."

Ms. Draxton owes \$14,420.53 on the USDA RD loan as of today, and in addition, potential fees of \$4,037.75 due the US Treasury pursuant to the terms of the Promissory Note.

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). I conclude that the "debt" referred to by the regulations in this instance is the deficiency amount due resulting from a "short sale."¹

RD's evidence of the existence of the initial loan amount for accounts # 460753 and 4640740 for both loans is shown by the Reamortization Agreements [date stamped Mar 12, 1999] for \$78000 and \$1060.00, respectively. RX-3. Under the terms of the Reamortization Agreement(s), **"all the terms of the note or assumption agreement or the instruments that secure them, remain unchanged."** When Ms. Draxton borrowed funds or more specifically, reamortized already existing notes payable to Rural Housing Service (RD), she also pledged the underlying real property as "a lien on the secured property." RX-3, RX-9A.

Ms. Draxton planned to re-sell her home on or about August 25, 1999, but the net proceeds were less than the amount due for the promissory note plus interest. RX-6 @ 1 of 10. As an accommodation to the overall short sale transaction, Raymond S. Roberts, III on behalf of RD, released the security connection (mortgage) to underlying property that Ms. Draxton was

¹ In this context, a "short sale" is one where the net proceeds of a real estate sale is insufficient to cover the total amount due on the seller's (Petitioner's) note to the seller's lender.

selling from the lien by “cancel(ing), release(ing) and discharge(ing) the mortgage(s).” PX-2 @ 3 of 6. The mortgaged property which was previously secured became unencumbered for sale to the new buyer, Kandace W. Miles. Thus, the “debt” covered by the Reamortization Agreements was converted from a secured note (via the Mortgage) to an unsecured note. I find that RD has met its initial burden establishing the “debt.”

Under the regulations, Petitioner is under a burden to “**present by a preponderance of the evidence that no debts exists.**” 31 CFR 285.11(f)(8)(ii). Ms. Draxton has shown that the mortgage has been satisfied (PX-2 @ 3 of 6), however, there is no evidence that the two notes referred to in the Reamortization Agreements were forgiven or satisfied.

It is logical, prudent, and not uncommon for RD to fully cooperate in a short sale by removing the encumbrance on real property then burdened by a mortgage. By releasing the mortgage lien on the real estate in a short sale, RD could have intended to create a “stop loss” action particularly where the seller (generically) has lost the ability to make regular payments, and/or properly maintain the physical aspects and local tax obligations of the house. Additionally, any delay in passing clear title to a new buyer may adversely affect the value of the house.

Findings of Fact

1. On June 7, 1994, Petitioner Francine Trueworthy, a/k/a Francine Draxton, obtained a USDA FHA home mortgage loan for property located at 17## Fuller Road, Carmel, ME 044**.² On March 11, 1999, Petitioner was signor to an Assumption Agreement incorporating a promissory note for \$78,000 (RX-3 @ p. 3 of 4) and a balloon note for \$1060. RX-3 @ p.1 of 4. The outstanding balances of the notes at the time of the ReAmortization Agreement was \$84,356.99 and \$1567.29, respectively.

2. Borrower thereafter requested that RD acquiesce in a short sale. On August 20, 1999,

²Complete address maintained in USDA records.

RD advised Petitioner in writing that there were 6 options resulting from a short sale. RD has shown that Petitioner chose option 5 to wit: **Pay nothing when the home is sold, but remain liable for the debt. (Charge Off).** RX-6 @ 1 of 10.

3. The mortgaged property was sold in a short sale on August 25, 1999 and RD extinguished the mortgage on the property. PX-2.

4. The net amount of funds received by RD from the short sale was \$63,440. RX-4.

5. Prior to the short sale, the total remaining balance due on the note was \$84,361.90 on account # 4640753 and \$1,564.06 plus \$38.99 on account # 4640740. Narrative as revised, RX- 4.

6. After the sale, the total amount due on the “debt”was \$22,524.95. RX-4.

7. Ms. Draxton was mailed the “Dear Homeowner” letter to the last known address from RD five days before the short sale. (RX-6). She may also have pre-signed the HUD-1 settlement sheet and/or may not have attended the closing. Neither of these possibilities absolves Petitioner from her duties under the notes to pay the “debt.”

8. After the sale, Treasury recovered an additional \$8,104.42 - thus reducing the amount due from Petitioner to \$14,420.53. Narrative as revised, RX-5.

9. The potential fees due U.S. Treasury pursuant to the Assumption Agreement(s) are \$4,037.75. Narrative, RX-5.

10. In her initial response and her Additional Narrative, Petitioner suggests that RD has agreed to option 6 on the “Dear Homeowner” letter. To wit: **“Have the government write-off the remaining balance on your account. (Cancellation).”**

11. RD denies that they offered to Petitioner a “cancellation” and Petitioner has offered no documentation to that effect that RD had agreed to cancel the balance of the debt.

12. Petitioner is liable on the debt under the terms of the Assumption Agreements.

13. Petitioner states that she is gainfully employed as a transit operator in/near Lakewood, WA.

14. Petitioner is unmarried and has submitted financial statements for herself only and has raised issues of financial hardship.

15. I have made a Hardship Calculation using her income and expense statements under oath. The calculations are enclosed.³

Conclusions of Law

1. Petitioner Francine Trueworthy a/k/a Francine Draxton is indebted to USDA's Rural Development program in the amount of \$14,420.53.

2. In addition, Ms. Draxton is indebted for potential fees to the US Treasury in the amount of \$4,037.75.

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

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

5. RD may administratively garnish Ms. Draxton's wages at the rate of 13% of her monthly disposable income.

6. After six months, RD may reassess Ms. Draxton's financial hardship criteria.

³ The hardship calculation is not posted on the OALJ website.

Order

1. The requirements of 31 C.F.R. ¶ 288.11(i) & (j) have been met.
2. The Administrative Wage Garnishment against this debtor may proceed.
3. After six months, RD may reassess Debtor's financial position and modify the garnishment percentage as circumstances dictate.
4. Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's office.

JAMES P. HURT

Hearing Official

August 16, 2010