

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 10-0189
)
Patricia A. Jarrett,)
)
Petitioner)

Final Decision and Order

This matter is before me upon the request of the Petitioner, Patricia A. Jarrett, for a hearing in response to efforts of Respondent to institute a federal administrative wage garnishment against her. On April 21, 2010, Administrative Law Judge Jill S. Clifton issued a Pre-hearing Order requiring the parties to exchange information concerning the amount of the debt. On June 15, 2010, the case was assigned to me.

I conducted a telephone hearing at the scheduled time on June 15, 2010. USDA Rural Development Agency (RD) was represented by Mary Kimball who testified on behalf of the RD agency.

Petitioner 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-5 on May 18, 2010 with the OALJ Hearing Clerk and certified that it mailed a copy of the same to Petitioner. On July 6, 2010, RD filed a post-hearing correction to the Narrative and corrections to RX-5. Ms. Jarrett stated that she received RD's initial Exhibits and witness list. At my request, RD filed on August 20, 2010 a Second Revision to Narrative and RX-6.

Although Ms. Jarrett was mailed the corrective documents, she has not filed any

comments. Ms. Jarrett submitted a typed-four-page Narrative plus exhibits EX J 1 (6 pages financial information and pay stub), EX J 1a.(12 pages of bills), EX J 2 (Health Dept. Survey), EX J-3 (2 page Affidavit), EX J 4 (Fax from Parks Realty), EX J 5 (6/3/2002 letter from Pioneer Recovery).

Ms. Jarrett owes \$5,568.74 on the USDA RD loan as of today, and in addition, potential fees of \$1,559.25 due the US Treasury pursuant to the terms of the Promissory Note.

Findings of Fact

1. On December 23, 1991, Petitioner Patricia Jarrett f/k/a/Patricia A. Geyer obtained a USDA FHA home mortgage loan for property located at 176## 55th Avenue, Barryton, MI 493**.¹ Ms. Jarrett was signor to a promissory note for \$34,000. RX-1 @ p. 1 of 3.

2. She become delinquent on her payments and was defaulted.

3. The mortgaged property was sold in a “short” sale on April 30, 2001. RX-4.

4. The net amount of funds received by RD from the short sale was \$22,909.57. RX-4.

5. Prior to the short sale, the total remaining balance due on the note was \$33,518.75.

RX- 4. After the sale, the amount due was \$10,609.08. Narrative as revised, RX-4.

6. After the sale, there was an additional \$225.00 sale charge. Treasury recovered an additional \$5040.34 - thus reducing the amount due from Petitioner to \$5,568.74. Narrative - revised, RX-5.

7. The potential fees due U.S. Treasury pursuant to the Loan Guarantee Agreement are \$1,559.25. Narrative, RX-5.

8. Ms. Jarrett is liable on the debt under the terms of the Promissory Note.

9. Ms. Jarrett makes out a strong case for negligent inspection on/about December 23, 1991. It is not clear whether the tort action would lie against the prior sellers for failure to disclose a latent defect or against the inspector(s) who failed to detect a sub-par septic system,

¹Complete address maintained in USDA records.

but in either case, the tort claim is not a bar to RD's recovery under the promissory note of December 23, 1991.

10. I have no jurisdiction to decide tort claims, even if timely brought, nor to utilize equity to offset the promissory note debt under seal.

11. The FmHA regulation in effect (7 CFR § 1944.16(h)(4), circa 1-1-91 Edition) states:

Existing dwelling. Applicants should be counseled regarding. .
(4) Be inspected and certified for adequacy of ...sewage disposal systems... The responsibility for these inspections and certifications will be identified in the sales agreement [the contract of sale) ...

12. RD's policy in effect contemporaneous with the closing on Ms. Jarrett's home was to have an "Rural Housing Applicant Interview." The standard form states: "No loan will be closed without signed evidence that the interview has been signed." In paragraph 17.)

INSPECTION OF PROPERTY: The borrower will be responsible for making inspections necessary to protect the borrower's interest. ...

13. Ms. Jarrett states that she had been previously unemployed, but acquired a new position of employment in November 2009. She indicated in her narrative that her new employment was less than full time.

14. Ms. Jarrett is now married and has submitted financial statements for herself only and has raised issues of financial hardship.

15. I have not made a Hardship Calculation since the household income and expense information is incomplete and she is now entitled to a temporary suspension of the garnishment of her wages under 31 CFR.285(11)(j).

Conclusions of Law

1. Petitioner Patricia Jarrett is indebted to USDA's Rural Development program in the amount of \$5,568.74.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$1,559.25.

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

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

5. RD may **NOT** administratively garnish Petitioner's wages at this time.

6. After three months, RD may reassess Petitioner's financial hardship criteria.

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. After three 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 23, 2010