

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 10-0173

In re: David Dodge,

Petitioner

DECISION AND ORDER

This matter is before me upon the request of David Dodge 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 April 1, 2010, a Prehearing Order was entered to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing on June 23, 2010.

The Respondent, Rural Development (RD) complied with that Order and a Narrative was filed, together with supporting documentation on April 30 and May 19, 2010. David Dodge filed documentation with RD with his Petition, (including his affidavit) and it was forwarded to the Hearing Clerk on/about March 18, 2010.

Mr. Dodge was represented by Michael Iacopino, Esq. and RD was represented by Mary Kimball and Gene Elkin, Esq. The parties were sworn.

Following the oral hearing, Petitioner filed a brief on July 28, 2010 and a follow-up attachment on October 28, 2010. RD filed its Reply brief on October 26, 2010.

In his brief, Mr. Dodge advanced the following arguments,

- That the debt should be dismissed because RD had not proved the debt.
- That RD did not prove the amount owed by Petitioner.
- That the doctrine of *laches* and limitations apply.
- That Petitioner did not receive actual notice of the judicial foreclosure on/about January 24, 1998.
- That RD failed to prove that Petitioner remained obligated after March 19, 1993.
- That the entire claim for garnishment should fail and all previously garnished monies returned.

Discussion

RD's brief essentially argues that the original note signed April 19, 1985 by David and Pamela Dodge (when they were still married) bound David Dodge through two subsequent re-amortizations (post-divorce) without his consent or concurrence. The totality of the financial circumstances surrounding the re-amortizations in 1993 and 1996 are absent from the evidence. RD's brief makes it clear that there were numerous periods of delinquencies on the loans and that "required [financial] documentation" was provided by Pamela Dodge in March 1993 which allowed RD to grant her additional subsidy on her monthly mortgage payment. RD's failure to require David Dodge's written acquiescence to the two re-amortizations twice denied him of any opportunity to cut his losses and force a partition and/or sale of the premises and/or specifically enforce

paragraph 9 of the Partial Permanent Stipulation between the divorced couple. RD proffered no evidence that David Dodge was notified of the deteriorating financial condition of the RD loan from and after March 19, 1993.

What emerges through the haze of the second and third re-amortizations is that RD did not use due diligence in obtaining current financial information about the remaining borrower (Pamela only), ignored traditional principles of agency, and relied fully on the knowingly outdated authority of Pamela Dodge to make two generous re-amortizations of the loan to the detriment of David Dodge.

RD's reference to the law regarding *laches* (*U.S. v. Kirkpatrick*, 22 U.S. 720 (1824) and statute of limitation (*Arch Mineral Corporation v. Bruce M. Babbitt*, 894 F. Supp. 974 (1995) will be adopted as controlling law in this case.

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 19, 1985, the Petitioner (and his then wife, Pamela Dodge) received a home mortgage loan in the amount of \$49,900 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) for a residential property located in Suncook, NH. RX-1.
2. David Dodge and Pamela Dodge were divorced on October 11, 1991. (Petitioner's affidavit).
3. The loan was re-amortized on/about March 19, 1993 and again on November 19, 1996. RX-3 @ p. 3 of 3.

4. The parties defaulted on the loan.
5. The property was sold at a judicial foreclosure on/about January 24, 1998 with constructive notice in the Concord Monitor newspaper (a legal publication of general circulation) and attempted good faith actual notice via certified mail to David Dodge's last known address.
6. The net proceeds from the foreclosure sale were \$49,680.00. (RX-3).
7. Treasury has collected and applied \$1,322.55 from one or both of the debtors in this matter. (RX-3).
8. RD has calculated the principal as \$43,794.16, the interest as \$2,802.89 and the delinquent taxes as \$7,899.88 for total due in the amount of \$54,497.03 as of the time of the re-amortization in March 19, 1993. (RD Reply brief)
9. RD presented no evidence of agency authority (ostensible or actual) of Pamela Dodge to re-amortize the loan on March 19, 1993 or November 19, 1996 on behalf of David Dodge.
10. Neither party provided evidence of the net fair market value of the house as of March 19, 1993.
11. I find that the net value at public auction of the house in January 1998 (\$49,680) to be the only credible evidence of its value on March 19, 1993.
12. I find David Dodge liable for \$3,494.48 ($\$54,497.03 - \$49,680.00 - \$1,322.55$) plus potential Treasury fees.

Conclusions of Law

1. David Dodge is jointly and severally indebted to USDA Rural Development for the mortgage loan extended to him and his then wife, Pamela Dodge prior to March 19, 1993.
2. After March 19, 1993, David Dodge is liable to USDA Rural Development in the amount of \$3,495.23, plus potential Treasury fees.
3. All procedural requirements for administrative wage garnishment set forth in 31 C.F.R. §285.11 have been met.
4. RD may proceed with administrative garnishment of Petitioner David Dodge.

Order

For the foregoing reasons, RD may garnishment Petitioner's wages.

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

Done at Washington, D.C.
October 28, 2010

JAMES P. HURT
Hearing Officer

Copies to:

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