

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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

Final 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 and a Reply Brief on August 2, 2010 and two financial statements on November 19, 2010 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 18, 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 26, 1992, (b) again on February 26, 1995, (c) and again on April 26, 1997. RD's position is that Mr. LaRoche's joint and several obligation on the November 26, 1980 and the July 17, 1987 Promissory Notes continues to be binding on him despite RD's failure to obtain his concurrence with the three additional re-amortizations.

I find that Paul D. LaRoche is liable for the deficiency (if any) on the November 26, 1980 Promissory note and the July 17, 1987 Promissory note as of the date of the March 26, 1992 re-amortizations.

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 evidence of the balance due is only relevant for the foreclosure date 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 re-amortization agreements, 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. The original promissory notes for accounts 5442497 and 5442484 both have a box @ IV checked as “Payments shall not be deferred....”

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,” on the last date for which Paul LaRouche would be obligated under the terms of his November 11, 1980 Promissory note and July 17, 1987 Promissory note (as an accommodation party).

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**.¹ 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 as an accommodation party and not as a spouse. RX-1 @ p. 3 of 5.

3. The property was re-amortized by Leslie LaRoche, individually, on March 26, 1992 and RD added additional burden to the mortgaged property by capitalizing the accrued interest of \$2,232.06 (Account # 5442484) and \$1,698.05 (Account # 5442497) resulting in a larger debt secured by the property. RX-7 @ p. 1 of 6; RX-8 @ p. 1 of 4.

4. The property was again re-amortized 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 (Account # 5442484) and \$4,527.96 (Account #5442497) resulting in a larger debt secured by the property. RX-7 @ p. 3 of 6, RX-8 @ p. 3 of 4.

5. The property was again re-amortized 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 notes on August 7, 2000 and RD foreclosed on the debt. RX - 3. The net amount of funds received by RD from the foreclosure sale on November

¹Complete address maintained in USDA records.

1, 2000 was \$92,200.00. RX-5.

7. RD has not clearly shown the delinquency status (if any) on the loans as of March 26, 1992. RD showed that Leslie LaRoche re-amortized the two notes for \$52,155.16 and \$33,087.18 for a total of \$85,242.34.

8. RD has not shown the value of the property as of March 26, 1992.

9. The only evidence of the value of the property was the \$92,200 of net funds received from the foreclosure sale on/about November 1, 2000. RX-5 @ p. 1 of 2.

10. RD received \$6,636.64 (after deduction of Treasury fees) towards the debt(s) from unknown sources. RX-5 @ p. 1 of 2.

11. There is no evidence in the file concerning Petitioner's timely enforcement of his procedural rights regarding any overage he may have paid.

12. At Paragraph IV of the November 26, 1980 original note for account 5442484, the box "Payments shall not be deferred..." is checked.

13. At Paragraph IV of the July 17, 1987 original note for account 5442497, the box "Payments shall not be deferred..." is checked.

Conclusions of Law

1. Petitioner Paul LaRoche is indebted to USDA's Rural Development program under the terms of the November 26, 1980 and July 17, 1987 Promissory notes, but the amount due when his ex-wife re-amortized the notes on March 26, 1992 was not in evidence.

2. I find that Paul LaRoche is liable for \$85,242.34 (\$52,155.16 + \$33,087.18).

2. Because I find the only credible net value of the property was \$92,200, I find that Paul LaRouche's obligation has been extinguished on the joint and several notes as of the re-amortization of July 17, 1987.

3. Because I find that Paul LaRoche's obligation was extinguished before RD collected post foreclosure funds, I find that Petitioner is not indebted for potential fees to the US Treasury.

4. All procedural requirements for administrative wage garnishment set forth in

31 C.F.R. ¶ 285.11 have been met.

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

6. RD may **not** administratively garnish Petitioners wages.

Order

1. The requirements of 31 C.F.R. ¶ 288.11(i) & (j) have been met.
2. RD may **not** further administratively garnish this debtor.
3. Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's office.

JAMES P. HURT

Hearing Official

November 18, 2010