

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 10-0409

In re: Elaine Wills,
formerly known as Phyllis Mash,
Phyllis H. Mash and Phyllis Elaine Mash,

Petitioner

Decision and Order

This matter is before the Administrative Law Judge upon the request of Elaine Wills (formerly known as Phyllis Mash, Phyllis H. Mash and Phyllis Elaine Mash) 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 September 27, 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 December 15, 2010.

The Respondent complied with that Order and a Narrative was filed, together with supporting documentation on November 4, 2010. Elaine Wills filed her documentation with the Hearing Clerk on October 19, 2010. At the hearing, sworn testimony was taken from the Petitioner and Mary E. Kimball, Accountant for the New Program Initiatives Branch, Rural Development (RD), United States Department of Agriculture, St. Louis, Missouri.

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 May 20, 1982, Elaine Wills, then known as Phyllis Mash and her then husband, Bobby Mash received a home mortgage loan in the amount of \$28,000.00 from Farmers Home Administration (FmHA) now Rural Development (RD), United States Department of Agriculture (USDA), for property located in Smithville, Georgia which was secured by a Deed of Trust. The borrowers subsequently obtained a second loan in the amount of \$4,100.00 on July 19, 1983. RX-1, 2.
2. Subsequent to the purchase of the residence, the Petitioner and her husband divorced in 1989 and as part of the division of property in the divorce, the Petitioner quitclaimed her interest in the property to Bobby Mash. Letter dated July 16, 2010 attached to Request for Hearing.
3. In 2002, while in sole possession of Bobby Mash, the mortgage loan was defaulted upon. As part of the foreclosure proceedings, notice of the default and a notice of acceleration were sent to the borrowers at the property address.
4. Bobby Mash filed a voluntary Chapter 7 petition in bankruptcy in 2001 and was subsequently discharged from liability of the indebtedness.
5. Other than reference to the foreclosure proceedings and the proceeds received from the sale, the record contains none of the foreclosure pleadings. Moreover, the record contains no evidence that the Petitioner received notice of the default, acceleration of the loan, that she was provided an opportunity to cure the default, or any evidence that a deficiency judgment was taken against her.

6. Treasury offsets totaling \$614.02 exclusive of Treasury fees have been received.
RX-6.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. USDA Rural Development failed in its burden of proof of establishing that the Petitioner was given actual notice of the default, the acceleration of the loan or was given an opportunity to cure any default.
3. The Petitioner is not indebted to USDA Rural Development for the balance of the indebtedness stemming from the mortgage loan extended to her.
4. Any amounts collected by Treasury prior to the entry of this Decision and Order may be retained and need not be returned.
5. As personal liability for the debt has not been established, the wages of Elaine Wills may **NOT** be subjected to garnishment.

Order

For the foregoing reasons, these proceedings are terminated and the wages of Elaine Wills, formerly known as Phyllis Mash shall **NOT** be subjected to administrative wage garnishment and the debt shall be recalled from Treasury as cancelled.

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

December 15, 2010

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Elaine Wills
Mary Kimball
Dale Theurer

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