

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 10-0213

In re: Helen Johnsen Brown,
Petitioner

Decision and Order

This matter is before the Administrative Law Judge upon the request of Petitioner 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 26, 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 July 30, 2010.

On May 17, 2010, Michael Lynch filed a letter with the Hearing Clerk's Office requesting that his appearance be entered as representing the Petitioner¹. The Respondent complied with the Order of April 26, 2010 filing a Narrative, together with supporting documentation on June 17, 2010. The Petitioner filed a Narrative, Witness and Exhibit List with the Hearing Clerk on June 23, 2010.²

A telephonic hearing was held on July 30, 2010. The Petitioner participated, represented by her counsel Michael Lynch. The Respondent was represented by Mary E. Kimball, Accountant for the New Program Initiatives Branch of USDA and by Gene

¹ The original letter sent by mail was subsequently received on May 25, 2010.

² The originals sent by mail were received on June 29, 2010.

Elkin, Legal Liaison for Rural Development. As noted in the Summary of the Hearing filed on July 30, 2010, Counsel for the Petitioner moved for Summary Judgment based upon the arguments raised in the materials filed on behalf of the Petitioner. As the record did not contain the full payment history, the record was held open for the receipt of those records. Upon receipt of the payment history, both sides were directed to file a Memorandum of Points and Authority in support of their respective positions.

The payment history was filed with the Hearing Clerk on October 1, 2010 as an Additional Exhibit. The exhibit indicates that a copy was provided to Mr. Lynch. On October 26, 2010, the Hearing Clerk's Office received a copy of a letter from the Petitioner's counsel requesting that certified copies of the payment history be provided (something not required in administrative proceedings), questioning the variance in the payment amounts from those required under the terms of the note (suggesting a lack of familiarity with the interest credit program extended to his client) and finally requesting an explanation of the potential fees charged by Treasury. Despite the passage of time, the record contains neither any inquiry or a Memorandum of Points and Authorities received from the Petitioner.

In the Narrative filed by the Petitioner, her counsel argues that the federal statute of limitation contained in 28 U.S.C. § 2415 bars recovery. Administrative wage garnishment and administrative salary offsets are administrative remedies that are not subject to statutes of limitations. The doctrine of laches also raised by the Petitioner has long been held to be inapplicable to the federal government. *U.S. v. Kirkpatrick*, 22 U.S. 720 (1824); *Chesapeake & Delaware Canal Co. v. U.S.*, 250 U.S. 123 (1919). Although nearly all mortgages extended by federal agencies contain express language waiving the

application of state statutes of limitation, the United States Supreme Court has held that the federal government is not subject to state statutes of limitation. *U.S. v. Thompson*, 98 U.S. 486 (1878) *U.S. v. Summerlin*, 310 U.S. 414 (1940). Although there is a federal statute of limitations found at 28 U.S.C. § 2415 that provides that “every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless the complaint is filed within six years of the right of action accrues....,” the statute has been construed by the courts as being applicable only to civil actions or legal or judicial remedies and does not bar collections by administrative remedies. *Arch Mineral Corporation v. Bruce M. Babbitt*, 894 F. Supp. 974 (S.D. WV 1995) (citing *Gerrard v. U.S. Ofc of Education*, 656 F. Supp. 570 (N.D. Cal. 1987)). Accordingly, the issues raised as defenses are without merit.

Given the very limited discovery provisions in proceedings of this type, the Petitioner’s requests in the October 19, 2010 letter will be denied and the matter resolved without the need for further proceedings.

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 24, 1985, the Petitioner (then known as Helen Johnsen) received a home mortgage loan in the amount of \$30,000.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) for property located in Rensselaerville, New York. RX-1.

2. The Petitioner defaulted on the loan and the State Office determined that the net recovery value based upon an appraisal did not warrant continuation of foreclosure proceedings. The State Office attempted without success to sell the property privately and ultimately approved a Valueless Lien based upon the appraisal of November 15, 2000. Respondent's Narrative, p. 1.

3. At the time of approval of the Valueless Lien, there being no recovery from the property, the Petitioner owed \$66,307.81. RX-3.

4. Treasury offsets totaling \$3,342.82 exclusive of Treasury fees have been received. RX-3.

5. Once a debt owed to the United States is placed with Treasury, although further interest ceases to accrue, consistent with their regulations, the Treasury Department assesses fees based upon the amount of the debt to recover the costs of collection of the debt. In the case of the Petitioner, the amount of potential fees is \$17,630.20. RX-4.

6. The remaining unpaid debt is in the amount of \$62,964.99 exclusive of potential Treasury fees. RX-4.

7. The Petitioner's income which is minimal roughly approximates her monthly expenses and with her income level, it appears unlikely to be in a position to ever liquidate the debt owed.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Petitioner is indebted to USDA Rural Development in the amount of \$62,964.99 exclusive of potential Treasury fees for the mortgage loan extended to her.

3. The Petitioner is under a financial hardship at this time.

4. Collection of the debt is not barred by 28 U.S.C. § 2415 or by fundamental fairness or the doctrine of laches.

5. The Respondent is **NOT** entitled to administratively garnish the wages of the Petitioner; however the debt shall remain at Treasury for any and all other appropriate collection action.

Order

For the foregoing reasons, the wages of Petitioner shall **NOT** be subjected to administrative wage garnishment.

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

January 10, 2011

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Michael Lynch, Esquire
Mary Kimball
Dale Theurer

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