

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0035

In re: Daniel Flores,
Petitioner

Decision and Order

This matter is before the Administrative Law Judge upon the request of Daniel Flores 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 November 24, 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 case for a telephonic hearing on January 13, 2011.

The Respondent filed a Narrative together with supporting documentation on December 15, 2010. The Petitioner failed to submit any evidence but did participate in the telephonic hearing. During the telephonic hearing, argument was received from Gene Elkin, Legal Liaison for Rural Development, United States Department of Agriculture, St. Louis, Missouri concerning the sufficiency of the evidence of the debt.

On the basis of the record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On December 2, 2003, Daniel Flores applied for and received a home mortgage loan guarantee from Rural Development (RD), United States Department of Agriculture (USDA) (Exhibit RX-1) and on December 23, 2003 obtained a home mortgage loan in the amount of \$75,000.00 for property located in Morriltown, Arkansas from Brinkley Mortgage Corporation. RX-9.
2. On December 23, 2003, Brinkley Mortgage Corporation assigned its interest in the Note and Mortgage to Chase Mortgage Corporation. RX-8, 9. The record contains a copy of a further assignment of the mortgage; however the name of the assignee of the mortgage is left blank. RX-8 page 2 of 4. Although the Respondent argues that an assignment was made to Chase Home Finance, LLC, there is no evidence of that assignment in the record.
3. In 2008, the Petitioner defaulted on the mortgage loan and J.P. Morgan Chase Bank, N.A., an entity other than Chase Mortgage Corporation or Chase Home Finance, LLC, submitted a loss claim. USDA paid J.P. Morgan Chase Bank, N.A. the sum of \$28,042.45 for accrued interest, protective advances, liquidation costs and property sale costs. RX-2.
4. Treasury offsets in the amount of \$188.22 exclusive of Treasury fees have been collected. RX-6. A further sum of \$121.74 less collection fees is apparently in the system still being processed; however, USDA has not received such funds.
5. No record of any further assignment of the loan and mortgage appears in the record before me.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. USDA Rural Development has failed in its burden of proof in establishing a debt in this action. The loan guarantee appearing in the record was assigned from Brinkley Mortgage Corporation to Chase Manhattan Mortgage Corporation; however, there is no evidence of subsequent assignment to J.P. Morgan Chase Bank of N.A., the entity submitting the loss claim and receiving the guaranty payment.
3. As no debt was properly established by competent evidence, administrative wage garnishment is not appropriate.
4. As no debt to USDA was established, all sums collected from the Petitioner should be refunded to him.
4. The Respondent is NOT entitled to administratively garnish the wages of the Petitioner.

Order

For the foregoing reasons, the wages of Daniel Flores may **NOT** be subjected to administrative wage garnishment. The debt shall be recalled from Treasury and all sums collected from him subsequent to foreclosure shall be refunded to him.

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

January 13, 2011

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Daniel Flores
Mary Kimball
Dale Theurer

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