

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 11-0107

In re: Charmaine Moore,

Petitioner

DECISION AND ORDER

This matter is before me upon the request of Charmaine Moore 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 January 14, 2011, I issued a Prehearing Order 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.

The USDA Rural Development (RD), Respondent, complied with that Order and a Narrative was filed, together with supporting documentation on January 31, 2011.

On February 15, 2011 at the scheduled time, both parties were available for the conference call. The parties were sworn. Following the hearing, Ms. Trotter forwarded . Financial Documents (5 pages) which I now label as PX-1 to the hearing Clerk.

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 29, 1992, Ricky Hathorn and Charmaine Moore, the Petitioner obtained a \$ 40,000 USDA FmHA loan for a primary residence located at 116## Road 832,

Philadelphia, MS 39###.¹ The Petitioner signed a Promissory Note and a mortgage. RX-1, RX-2.

2. On October 29, 1998, Petitioner, Charmaine Moore sold her remaining interest to Ricky Hathorn. (RX-7 @ p. 8 of 9. Ms. Moore did not obtain a release of her obligation on the May 29, 1992 note and remained jointly and severally liable.

3. The borrowers defaulted on the loan and on September 28, 2004, she was mailed a notice of acceleration. RX-4 to her last known address.

4. The borrowers filed a Chapter 13 bankruptcy petition, however the bankruptcy petition was dismissed on May 8, 2006.

5. The borrowers entered into a short sale on July 26, 2010 and USDA received a net of \$20,000 from the sale.

6. At the time of the sale, Ms. Moore jointly and severally owed a total of \$54,216.29, including principal, interest and fees. RX – 5 @ p. 1 of 2.

7. The property was sold in a foreclosure sale on January 8, 2001.

8. USDA RD received a net \$16,426.00 from the foreclosure sale. Narrative and RX- 5 @ p. 2 of 3.

9. After application of the sale proceeds, Ms. Trotter owed \$19,613.17 on account # 15938292 (RX-5 @ p. 1 of 3) and \$1,333.96 on account # 15936414. RX-5 @ p. 2 of 3.

10. Since the sale, RD has received a net \$867.95 (\$233.00 + \$516.46 +\$84.30 + \$34.19) from treasury. Narrative, RX 5 @ p. 1 of 3.

11. The remaining unpaid debt is in the amount of \$20,079.18 (\$18,747.22 + \$1,333.96) exclusive of potential Treasury fees. RX-6.

¹ Complete address maintained in USDA files.

12. The remaining potential treasury fees are \$6,023.76 (\$5,623.57 + \$400.19).
RX-6.

13. Ms. Trotter has been employed since February 2010 and is a widow receiving S.S.A. benefits and child support for one of her three dependents.

14. Ms. Trotter submitted her financial statements under oath which included her gross bi-weekly salary and monthly expenses. Ms. Trotter forwarded additional financial information after the hearing, also under oath. It appears her wages are barely more than the mandatory minimum wage. Her SSA benefits and child support were not subject to potential wage garnishment, however they were considered in the Financial hardship calculation. Although it appears she did not have full time employment, I calculated Petitioner's potential wages at 40 hours per week.

15. Since the hearing, another creditor has filed a notice of garnishment for a debt of \$4,090.90 with collection at the rate of 25% of net wages.

16. Based upon the available financial information, I performed a Financial Hardship calculation using standard Federal and State Income Tax rate for head of Household. The result of the calculation is attached².

Conclusions of Law

1. Pamela Trotter, k/n/a Pamela T. Evans is indebted to USDA Rural Development in the amount of \$20,079.18 for the two mortgage loans extended to her.

2. Pamela Trotter is indebted to the US Treasury for potential fees in the amount of \$6,023.76.

² The Financial Hardship Calculation will not be posted on the OALJ website.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is **not** entitled to administratively garnish the wages of the Petitioner for a period of one year. After one year, RD may review the then existing financial statements and assess the legal entitlement to garnish her wages.

Order

For the foregoing reasons, the wages of Pamela Trotter Evans shall **not** be subjected to administrative wage garnishment for a period of one year.

After one year, RD may re-assess Ms. Trotter's financial position.

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

Done at Washington, D.C.
March 14, 2011

JAMES P. HURT
Hearing Officer

Copies to:

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