

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 11-0221

In re: Deborah Kovary
n/k/a Deborah Hartshorn,

Petitioner

Decision and Order (Revised)

This matter is before me 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 May 20, 2011, 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.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-6 on June 1, 2011. The Petitioner filed her financial statement on June 30, 2011 (which I now label as PX-1). Petitioner prepared her monthly expense statement for her share of the household expenses. Following the hearing, Petitioner provided a bi-weekly payroll statement and clarification to her financial statement (which I now label as PX-2 and PX-3, respectively).

Petitioner was present and was represented by her attorney, Michael Drain. Ms. Mary Kimball represented RD. The parties were sworn.

Petitioner advised that the payroll statement she provided represented 73.5 hours of work for a two week period whereas she normally has 80 hours of work for a two week period. I grossed up the income and taxes by a 1.088 factor. I did not allow life insurance and 401K expenses, but did allow \$122 for half of her husband's car payment. 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 February 3, 1998, Deborah Kovary received a secondary home mortgage loan in the amount of \$78,000.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase her home on a property located in 14*** Standish Ave. Middlefield, OH 440##¹.

RX-1, RX-2.

2. At the time of the RD loan, there was a pre-existing first mortgage from Cortland Savings and Banking on the same property which was originally \$20,000.00.

2. Ms. Kovary reamortized her RD loan under the same terms on April 3, 2008 and the new principal amount became \$71,619.82. RX-3.

3. The borrower became in default and a Notice of Acceleration was mailed on August 27, 2009. RX-4.

4. The borrower entered into a "short sale" where the property was sold for \$87,000.00. RX-5.

¹ The complete address is maintained in USDA files.

5. The first mortgage to Cortland was paid in full and RD released the lien on borrower's property; however the underlying debt remained as an unsecured debt.

Narrative, RX-5.

6. The principal loan balance for the RD loan prior to the short sale was \$69,487.11, plus \$5,525.64 for accrued interest, plus \$2,050.39 for fees for a total of \$77,109.90.

Narrative, RX-5.

7. RD received a net \$54,384.06 from the short sale. Narrative, RX-5.

8. Treasury offsets totaling \$1,673.00 exclusive of Treasury fees have been received from borrower. RX-5.

9. The remaining unpaid debt is in the amount of \$21,052.84 - exclusive of potential Treasury fees. RX-5.

10. The remaining potential fees from Treasury are \$5,894.80. RX-6.

11. Ms. Kovary states that she has been gainfully employed for 4 years.

12. Ms. Kovary raised issues of financial hardship. I performed a Financial Hardship calculation using the financial statements and payroll statements she provided².

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of \$21,052.84 exclusive of potential Treasury fees for the mortgage loan extended to her.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$5,894.80.

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

² The Financial Hardship calculation is not posted on the OALJ website.

4. The Respondent is entitled to administratively garnish the wages of the Petitioner at the rate of 5% of her monthly disposable income.

Order

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment at the rate of 5% of her monthly disposable income. After one year, RD may re-assess the Petitioner's financial position.

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

July 14, 2011

James P. Hurt
Hearing Official

Copies to: Deborah Kovary
Michael Drain, Esq.
Mary Kimball
Dale Theurer

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