

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0197

In re: JENNIFER LEE,

Petitioner

**DECISION AND ORDER**

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the request of Jennifer Lee (“Petitioner”) for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development Agency (“Respondent”; “USDA-RD”); and if established, the propriety of imposing administrative wage garnishment. On January 13, 2012, Petitioner requested a hearing. By Order issued February 15, 2012, a hearing was scheduled to commence on March 6, 2012, and the parties were directed to provide information and documentation to the Hearing Clerk for the Office of Administrative Law Judges for the United States Department of Agriculture.

On February 14, 2012, Respondent filed a Narrative, together with supporting documentation (“RX-1 through RX-11”). On March 7, 2012, Petitioner’s attorney entered an appearance and filed a Consumer Debtor Financial Statement, together with supporting documentation (“PX-1”). In addition, counsel for Petitioner requested a continuance of the hearing scheduled for March 6, 2012.

The request for continuance was granted and the hearing was rescheduled for March 13, 2012, at which time Jason Ravensborg, Esq. represented Petitioner and Michelle Tanner of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri, represented Respondent.

I held the record open to allow the submission of additional exhibits and argument. On March 23, 2012, Petitioner filed a brief and exhibits identified as EX 1 through EX-9.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law, and Order shall be entered:

**FINDINGS OF FACT**

1. On January 12, 2007, the Petitioner<sup>1</sup> received a home mortgage loan in the amount of \$64,900.00 from lender South Dakota Housing Development (“Lender”) for the purchase of real property located in Marion, South Dakota, evidenced by Promissory Note. RX-2.
2. Before executing the promissory note for the loan, on November 28, 2006, Petitioner requested a Single Family Housing Loan Guarantee from the USDA-RD, which was granted. RX-1.
3. By executing the guarantee request, Petitioner certified that she would reimburse USDA RD for the amount of any loss claim on the loan paid to the Lender or its assigns. RX-1.
4. The loan fell into default and when a short sale failed, a foreclosure sale was noticed. RX-3; RX-4; EX-1, attached to Petitioner’s brief.
5. The Lender acquired the property upon a bid for the full amount due on the loan, \$72,924.39. RX-5; EX-1, attached to Petitioner’s brief.
6. The Lender warranted to the Court that no deficiency existed on the loan. EX-3, attached to Petitioner’s brief.
7. On June 29, 2009, the South Dakota District Court issued a judgment and decree of foreclosure specifically stating that Plaintiff (the Lender) did not seek a deficiency. EX-2, attached to Petitioner’s brief.

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<sup>1</sup> Petitioner’s former husband also executed the promissory note, but the instant proceeding involves Petitioner only, and therefore, references to the transactions involved herein shall be made solely to her.

8. On July 16, 2009, the Sheriff of Turner County filed a certificate of sale of the property for \$72,924.39 with no deficiency. EX-3, attached to Petitioner's brief.
9. On September 28, 2009, the Sheriff of Turner County filed a Sheriff's Deed with the Court. RX-5; EX-4, attached to Petitioner's brief.
10. On October 9, 2009, Lender filed a Satisfaction of Judgment with the Court, specifically providing that the judgment was fully satisfied. EX-5 and EX-6, attached to Petitioner's brief.
11. On February 26, 2010, Lender sold the property to a third party for \$34,800.00. RX-7.
12. At the time of that sale, the amount due on Petitioner's loan was \$73,211.16, plus fees and costs of foreclosure and sale for a total due of \$80,407.69. RX-9.
13. After application of the sale proceeds, Lender presented USDA-RD with a loss claim of \$41,509.10, which USDA-RD paid. RX-7; RX-8.
14. On May 10, 2011, the account was referred to the U.S. Department of Treasury ("Treasury") for collection, in the amount of \$37,643.10 plus potential additional fees of \$10,540.06. RX-10; RX-11.
15. Petitioner's 2010 federal income tax refund in the amount of \$3,883.00 was intercepted by Treasury and applied to the debt. RX-11; EX-8, attached to Petitioner's brief.
16. Petitioner was advised of intent to garnish her wages to satisfy the indebtedness.
17. Petitioner timely requested a hearing, which was held on March 13, 2012.

### **CONCLUSIONS OF LAW**

1. The Secretary has jurisdiction in this matter.
2. The Lender failed to follow the law of South Dakota by establishing the existence of a deficiency at the time of the foreclosure sale. EX-9 attached to Petitioner's brief.

3. All notices to Petitioner from Lender and the Court entering judgment establish that Lender deemed Petitioner's debt to be satisfied.
4. Petitioner should not be held responsible for USDA-RD's failure to exercise due diligence when paying an unsubstantiated deficiency which was not duly established in law.
5. Respondent has failed to establish the existence of a valid debt from Petitioner to USDA-RD.<sup>2</sup>
2. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have not been met because Respondent has failed to establish the existence of a valid debt.
3. Petitioner's account at Treasury should be abolished and canceled.
4. Petitioner's 2010 federal income tax refund in the amount of \$3,883.00 was improperly offset and must be returned to her.
5. Respondent is not entitled to administratively garnish the wages of the Petitioner.
6. Treasury has no authority to undertake any collection action as Petitioner is not indebted to the United States.

### **ORDER**

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

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

So Ordered this 28th day of March, 2012 in Washington, D.C.

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Janice K. Bullard  
Administrative Law Judge

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<sup>2</sup> It is clear that USDA-RD would be able to pursue an action against the Lender for the payment of a deficiency which the Lender warranted did not exist.