

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0368

In re: Debbie D. Harvey,  
Petitioner

**Decision and Order**

This matter is before the Administrative Law Judge upon the request of the 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 10, 2012, 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 July 25, 2012.

The Respondent complied with the Prehearing Order and a Narrative was filed, together with supporting documentation on May 25, 2012. The Petitioner has neither filed any material subsequent to the Request for Hearing nor otherwise complied with the Prehearing Order. At the hearing held on July 25, 2012, both the Petitioner and Michelle Tanner, Appeals Coordinator, Rural Development, United States Department of Agriculture, St. Louis, Missouri testified.

This case is problematic for a number of reasons. Initially, while possibly waived in order to preserve the sale it appears that Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) failed

to secure a first lien on the property prior to all others as the Deed which conveyed the property to the Petitioner and her husband retained a Vendor's Lien for \$15,000.00 which was secured by a Deed of Trust to Meier Mortgage, Inc.<sup>1</sup> RX-2. On July 5, 2005, RD undertook to pay off that indebtedness (RX-5; 3 of 29) and in September of 2005 received an Assignment of Note and Deed of Trust from Chase Home Finance. LLC which represented itself to then be the holder of the Note and Deed of Trust. RX-2, (7 and 8 of 9.) The Display History/Notes reflect that the borrowers were contacted to sign a Reamortization Agreement; however, it was never executed or return to RD. RX-5 (5 of 29) That same exhibit then reflects that although the borrowers had notified the field office on or about April 6, 2006 that they were no longer living in the property, on April 17, 2006, the Agency nonetheless sent the Notice of Acceleration to the borrowers at the property address. The record then reflects that the foreclosure sale did not occur until June 3, 2008.

On the basis of the record before me, nothing further having been received from the Petitioner, the following Findings of Fact, Conclusions of Law and Order will be entered.

#### **Findings of Fact**

1. On January 31, 1997, Debbie D. Harvey and her husband James Harvey, III received a home mortgage loan in the amount of \$95,500.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) for property located in Leander, Texas. RX-1.

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<sup>1</sup> The record does not contain any information that FmHA was aware of the prior lien or that approval of the prior indebtedness was given.

2. On the same date, Petitioner and her husband executed a Deed of Trust in favor of Meier Mortgage, Inc. securing indebtedness of \$15,000.00 arising out of a Vendor's Lien retained in the Deed of Conveyance of the above property to them and having priority over the home mortgage loan to FmHA. RX-2.
3. On July 5, 2005, RD undertook to pay off the prior Deed of Trust indebtedness then amounting to \$20,778.36 (RX-5; 3 of 29) and in September of 2005 received an Assignment of Note and Deed of Trust from Chase Home Finance. LLC which represented itself to then be the holder of the Note and Deed of Trust. RX-2, (7 and 8 of 9.)
4. Although the Deed of Trust to Meier Mortgage, Inc. reflects that the recorded document was to be sent to Chase Manhattan Mortgage Corporation, the record does not contain evidence of the assignment from Meier Mortgage, Inc. to any subsequent holder. RX-2.
5. Although there are no intermediate assignments contained in the record, the assignment to United States Department of Agriculture Rural Housing Service reflects that it was received from Chase Home Finance LLC, an entity other than either Meier Mortgage, Inc. or Chase Manhattan Mortgage Corporation. RX-2.
6. Although RD sent a Notice of Acceleration to the property address in April of 2006, the foreclosure sale was not conducted until June of 2008.
7. USDA claims an alleged debt of \$32,768.91 and referred that amount to Treasury. RX-7.
8. There is no indication that any amounts have been received via the Treasury Offset Program.

9. For the deficiencies noted in the Conclusions of Law, the amount established to be due will be reduced to \$11,990.55, exclusive of potential Treasury fees.

### **Conclusions of Law**

1. The Secretary has jurisdiction in this matter.
2. The Agency failed in its obligation to act diligently in the following instances.
  - a. A first and prior lien on the property was not obtained.
  - b. The Agency undertook to pay off the prior Deed of Trust indebtedness then amounting to \$20,778.36 (RX-5; 3 of 29) and in September of 2005 received an Assignment of Note and Deed of Trust from an entity which the file does not establish to be the then holder of the Note and Deed of Trust. RX-2, (7 and 8 of 9.)
    - c. Despite Acceleration of the Indebtedness in April of 2006, the foreclosure sale did not take place until June of 2008, over two years later.
3. Petitioner is indebted to USDA Rural Development in the amount of \$11,990.55 for the mortgage loan extended to her.
4. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.
5. The Respondent is entitled to administratively garnish the wages of the Petitioner

### **Order**

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment at the rate of 15% of disposable pay, or such lesser amount as might be specified in 31 C.F.R. § 285.11(i).

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

July 25, 2012

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**Peter M. Davenport**  
Chief Administrative Law Judge

Copies to:     Debbie D. Harvey  
                  Michelle Tanner  
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