

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 12-0431

In re: Connie Parrish

Petitioner

Decision and Order

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 June 7, 2012, 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 Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-4 on June 27, 2012. Ms. Parrish filed her financial statements on July 2, 2012 and July 20, 2012 which I now label as PX-1 and PX-2, respectively. At my request on August 8, 2012, Ms. Parrish filed a statement (which I now label as PX-3) of her recollection of the facts and circumstances surrounding the Power of Attorney used to bind her to the RD loan (See RX- 1 @ page 7 of 11).

On July 18, 2012 and at the time set for the hearing, both parties were available. Ms. Michelle Tanner represented RD. Ms. Parrish was self represented. The parties were sworn.

Petitioner has been employed for more than one year.

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 April 7, 1995, Petitioner obtained a loan for the purchase of a primary home in the amount of \$51,700.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase her home on a property located in Blanchard, Louisiana. RX-1 @p. 7 of 11.
2. The borrower was called to active military duty and was stationed out of the country at the time of the closing of the mortgage. She states that she granted a notarized limited power of attorney (to her then fiancé – Kenneth Wayne Parrish) to complete the settlement documents for the RD loan. PX-3.
3. The Power of Attorney document was accepted by RD loan processors as “Duly authorized pursuant to Power of Attorney dated March 22, 1995.” RX-1 @ 7 of 11.
4. Neither party could produce a copy of the Power of Attorney.
5. The borrower abandoned the property and moved to another state. RX-1 @ 8 of 11. The Borrower’s account was delinquent. The loan was accelerated for foreclosure.
6. The home was sold to a third party who assumed the loan in the amount of \$46,000 under new rates and terms on March 4, 1998. Narrative, RX-1 @ p. 9 of 11.

7. Prior to the sale the Borrower owed RD for principal, interest, fees, plus late fees for a total of \$59,328.75 to pay off the RD loan. Narrative, RX-3.
8. After application of the proceeds of the sale to the third party, an additional \$1,030.50 was credited to the unpaid amount prior to the transfer of the delinquent account to Treasury. RX-3.
9. Treasury has collected an additional \$1,936.32 (net) towards the debt. RX-3, RX-4 @ p. 1 of 3 .
10. The remaining amount due of \$10,361.93 was transferred to Treasury for collection on June 25, 2012. RX-4 @ p.2 of 3.
11. The potential Treasury collection fees stated were \$2,901.34 RX-4 @ p. 2 of 3. (See paragraph 13 below).
12. The loan servicing company (or bank) improperly issued a IRS 1099-c form for “Debt Cancellation” and “Interest Forgiven.” PX -2.
13. IRS collected \$2,482.00 as additional income taxes as a result of the improperly issued IRS 1099-c. RX-2 @ p. 17 of 31. I determine that her debt related to the RD loan should be reduced by \$2,482.00 from the amount claimed by RD.
14. Ms. Parrish has been employed for more than one year. There are two income earners in her household. There is an autistic minor child in the home. Ms. Parrish’s paystub indicates she works less than a 40 week and that her net income is approximately 52% of the household income.
15. Petitioner raised the issue of financial hardship and I utilized her financial statements and payroll information to prepare a Financial Hardship Calculation¹.

Conclusions of Law

¹ The Financial Hardship Calculation is not posted on the OALJ website.

1. Petitioner is indebted to USDA Rural Development in the amount of \$7,879.93 (\$10,361.93 - \$2,482.00) 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 \$2,206.38 (28% of \$7,879.93).
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 at this time.

Order

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

August 10, 2012

James P. Hurt
Hearing Official

Copies to: Connie Parrish
Giovanna Leopardi
Dale Theurer

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue SW
Room 1031, South Building
Washington, D.C. 20250-9203
202-720-4443
Fax: 202-720-9776