

United States Department Of Agriculture
Before The Secretary Of Agriculture

Docket No. 13 – 0016

In re: Shelley Matheson
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 the position of administrative wage garnishment.

On November 2, 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 matter for a telephonic hearing on November 30, 2012.

At the request of the parties, the case was rescheduled to December 27, 2012. At the time of the place and hearing all parties were present.

Michelle Tanner represented Rural Development (RD) and Mr. Charles Wist, Esq. represented the Petitioner. The parties were sworn.

Petitioner acknowledged receipt of RD's narrative and exhibits RX-1 through RX-5. RD acknowledged receipt of Petitioner's narrative along with an exhibit consisting of the RD Servicing and Collection's regulations. RD was allowed extra time to obtain a copy of the foreclosure order filed in Montgomery County, Texas. That substitute Trustee Deed has been received which I now mark as RX-6. Petitioner was allowed additional time to clarify portions of the Petitioner's income and expense statement. I have not included overtime pay in determining Petitioner's income potential. I have not included Petitioner's voluntary 401K and tithing contributions in determining her "expenses." Petitioner also filed a Post Hearing Submission along with a revised signed expense statement (December 30, 2012).

I have considered the Petitioner's brief. RD's exhibits RX-1 and RX-2 shows she agreed to be jointly and severally obligated on the loan given to her. RD's exhibit RX-5 @ p. 3 of 5 shows that RD has been actively pursuing it's rights by Tax Offset since May 19, 2006. The judicial sale

of the property occurred on/about October 1998, therefore I reject any notion of laches in enforcement of the debt. (See Petitioner's brief regarding the Debt Collection Improvement Act). Petitioner has submitted numerous copies of certified mail envelopes that did not reach her at the address where she received mail. RD's obligation and the Substitute Trustee's duty to give notice of the pending judicial sale is a "good-faith" attempt to give notice. The state of Texas recognizes the ultimate (fail-safe) notice to the world by publication of the pending sale in a newspaper of general circulation in the jurisdiction where the property is situated. (See RX-6). I have reviewed Petitioner's income and expense statement and have prepared a Financial Hardship Calculation.¹

On the basis of the record before me the following facts and conclusions of law and order will be entered.

Findings of Fact

1. Petitioners Shelley Matheson and her husband, Darin Matheson, purchased and financed their home in Montgomery County, Texas by borrowing money from Rural Development on October 17, 1985 in the amount of \$42,340. (RX-1).
2. The loan became in default and the loan was accelerated for foreclosure on March 24, 1996 (RX-2).
3. A foreclosure sale was scheduled and held on October 6, 1998 (RX-2).
4. At the foreclosure sale, the home was purchased for \$30,563. (RX-2 @ p. 6 of 31, RX-6).
5. Prior to the judicial sale, the borrowers owed \$74,707.36 for principal, interest, and fees. After the proceeds were applied to the debt, additional interest that was owed was waived from the account. An additional foreclosure cost of \$11 was added to the account, for a total due of \$42,139.41. (RX-4).
6. The remaining balance of funds due was submitted to treasury for collection on June 29, 2001. (RX-2 @ p. 12 of 31). The amount of \$29,984.26 is at treasury for collection, plus an additional amount of remaining potential collection fees for \$8395.59 for a total due of \$38,379.85. (RX-5 @ p. 4 of 5).
7. Petitioner is jointly and severally liable on the debt along with Darin Matheson.
8. Petitioner is divorced and has no dependents.

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

9. Petitioner has current debts from Federal guaranteed student loans, dental treatments, and VISA credit card. At the current rate of retirement, some of her debts will be satisfied in about 10 months.
10. Petitioner lives modestly and has no vehicle. She uses public transportation.
11. Petitioner has been employed for more than one year.
12. At the Petitioners request a financial hardship calculation was performed. For the purposes of the Financial Hardship Calculation, I am not crediting any new payments to her 401K plan or her tithing to her church. I am not including overtime wages.

Conclusions of Law

1. Petitioner is jointly and severally liable to the USDA Rural Development in the amount of \$29,984.26 for the mortgage loans extended to her.
2. In addition Petitioner is jointly and severally liable for \$8,395.59 as potential collection fees to the U.S. Treasury.
3. All Procedural Requirements for Administrative Wage Offset Set Forth in 31 CFR Paragraph 285.11 Have Been Met.
4. Rural Development is not entitled to garnish the wages of Petitioner at this time. Rural Development may reassess Petitioner's financial position in 10 months.

Order

For the foregoing reasons, the wages of Petitioner shall not be subjected to administrative wage garnishment as might be specified in 31 CFR § 285.11 (i).

In 10 months, the financial position of Petitioner may be reevaluated. A Copy of this Decision and Order shall be served upon the parties by the hearing clerk's office.

January 23, 2013

James P Hurt
Hearing Officer

Copies to: Charles Wist
Michelle Tanner
Dale Thurer