

NOT TO BE PUBLISHED IN AGRICULTURE DECISIONS

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 10-0092

In re: SARAH B. DENNIS,

Petitioner

DECISION AND ORDER

This matter is before the Administrative Law Judge upon the request of Sara B. Dennis 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 February 17, 2010, a Prehearing Order was entered to facilitate a meaningful conference with the parties as to how the case would be resolved and to direct the exchange of information and documentation concerning the existence of the debt.

The Respondent complied with that Order and a Narrative was filed, together with supporting documentation on March 3, 2010. The Petitioner filed her documentation with the Hearing Clerk on March 9, 2010. In the materials filed, Ms. Dennis acknowledged signing the note and mortgage which gave rise to the obligation being sought to be collected, but alleged that the residence's foundation had pre-existing structural damage which either negligently was not detected by the pre-purchase inspection conducted by the Farmers Home Administration (FmHA) inspector or not disclosed to her prior to her purchase.

Ms. Dennis further alleged that following foreclosure, USDA determined that the foundation's structural damage could not be repaired and requested that the local fire department burn the residence to the ground, confirmation of which appears as RX-6.

The Respondent takes the position that it is that despite the fact that the FmHA made the inspection that the property inspection was the responsibility of the borrower according to the FmHA Applicant Orientation Guide in effect at the time and that once title had passed to the borrower, that she assumed responsibility for the condition of the home. It also appears to be their position that the borrower owes the full amount of the loan less all expenses incurred without regard to the fact the residence could not be sold with the structural damage and their decision to burn the residence to the ground impacted the resale recovery.

As FmHA undertook the responsibility of performing the inspection, despite the provisions of the Applicant Orientation Guide to the contrary, equity requires that the inspection be performed in a competent manner and that USDA be required to assume the loss precipitated by the negligence of its employee.

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 August 3, 1994 Sarah B. Dennis received a home mortgage loan in the amount of \$77,280.00 from the FmHA, United States Department of Agriculture (now Rural Development or RD) for property located in Johnson, Vermont. RX-1.

2. Prior to the purchase of the property, it was inspected by an employee of FmHA. That inspection failed to detect a pre-existing structural defect in the residence's foundation and Ms. Dennis completed the transaction without knowledge of the defect.
3. Ms. Dennis defaulted and USDA acquired the property at the foreclosure sale in 2001.
4. USDA was unable to sell the residence with the structural defects and had the structure burned by the local fire department after which it then sold the land upon which the residence had previously stood.
5. After application of Treasury offsets totaling \$1,409.3, USDA claimed \$48,115.73, exclusive of potential Treasury fees of \$13,472.40. RX-4.
6. The negligent inspection of the property by a FmHA employee which failed to detect the pre-existing structural defect to the residence foundation was the proximate cause of the loss to the Government.

Conclusions of Law

1. Sarah B. Dennis is not indebted to USDA Rural Development in any amount.
2. The Respondent is **NOT** entitled to administratively garnish the wages of the Petitioner.

Order

For the foregoing reasons, the relief sought in the Petition is **GRANTED** and all administrative wage garnishment proceedings are **ORDERED TERMINATED**.

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

Done at Washington, D.C.
May 20, 2010

PETER M. DAVENPORT
Acting Chief Administrative Law Judge

Copies to: Sarah B. Dennis
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Dale Theurer

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