

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWG Docket No. 11-0310
)	
Jessica Schrauth,)	
)	
)	
Petitioner)	Decision And Order

Pursuant to a Hearing Notice, I held a hearing in this proceeding by telephone, on August 25, 2011, at 2:30 PM Eastern Time. Petitioner, Jessica Schrauth, was represented by her attorney, Douglas K. Marone, Oshkosh, Wisconsin. Respondent, United States Department of Agriculture, Rural Development (USDA-RD), was represented by Mary E. Kimball. Both Petitioner, Jessica Schrauth, and Ms. Kimball gave sworn testimony. USDA-RD introduced documents pertaining to a home loan mortgage JP Morgan Chase Bank gave to Petitioner, on July 15, 2005, for \$91,000.00 to purchase a home at 310 Hall Street, Ripon, WI 54971 (RX-1). Prior to signing this loan, Petitioner, Jessica Schrauth, signed a Request for Single Family Housing Loan Guarantee, on May 31, 2005, under which USDA-RD guaranteed to pay any loss on the mortgage loan that was subsequently obtained (RX-2).

The mortgage loan was not paid as required. On April 17, 2009, USDA-RD paid JP Morgan Chase Bank \$60,354.03 on the losses it sustained when the home was sold, on March 12, 2009, for \$44,000.00 at a foreclosure sale by JP Morgan Chase Bank pursuant to Wis.Stat. §846.101 (RX-3, RX-4 and RX-5). Since then, Treasury has collected \$5,063.95 through offsets against federal income tax refunds otherwise due to Ms.

Schrauth. At present, \$55,290.08 is owed on the debt plus “Remaining potential fees” to Treasury of \$15,481.22, or \$70,771.30 total (RX-9).

Ms. Schrauth testified that she is married but her husband, Richard Schrauth, is not on the loan or the guarantee. She is employed as a safety dispatcher by a trucking company earning a net weekly salary of [REDACTED] or [REDACTED] net per month. Her husband is employed part time as a sorter by UPS earning [REDACTED] per week. Their monthly expenses are: [REDACTED]-rent; [REDACTED]-food; [REDACTED]-satelite TV; [REDACTED] electricity; [REDACTED]-heat; [REDACTED]-telephone; [REDACTED]-auto insurance; and [REDACTED]-car payments, or \$ [REDACTED] total.

Petitioner’s attorney filed a copy of the January 31, 2008, Findings of Fact, Conclusions of Law and Judgment under the foreclosure proceeding by JP Morgan Chase Bank pursuant to Wis.Stat.§846.101. Paragraph 12 states: “That no deficiency judgment may be obtained against any defendant.” He argued that under Wisconsin law, USDA-RD is thereby precluded from pursuing the debt on the loss it sustained.

Case law on the subject shows that USDA-RD would be foreclosed from pursuing collection of the debt if it had sought to do so by way of subrogation, ie., substituting itself for JP Morgan Chase Bank that had elected to use the expedited foreclosure proceeding of Wis.Stat.§846.101 that precludes further pursuit of the debt, instead of the slower foreclosure provided under Wis.Stat.§846.04 that allows for deficiency judgments. But USDA-RD has elected instead to seek indemnity for its losses under the Request for Single Family Housing Loan Guarantee that Petitioner, Jessica Schrauth, signed, on May 31, 2005 in which she did:

...certify and acknowledge that if the Agency pays a loss claim on the requested loan to the lender, I will reimburse the Agency for that amount. If I do not, the Agency will use all remedies available to it, including those under the Debt Collection Improvement Act, to recover on the Federal debt directly from me. The

agency's right to collect is independent of the lender's right to collect under the guaranteed note and will not be affected by any release by the lender of my obligation to repay the loan. Any Agency collection under this paragraph will not be shared with the lender.

In reviewing an action to collect losses sustained in guaranteeing a mortgage to a veteran by the United States Veterans Administration, the Seventh Circuit analyzed Wisconsin law and federal law. The Court held that because the VA sought recovery directly under its federal indemnity rights, rather than under the subrogated rights of the lender, it was still entitled to direct indemnification of its loss from the borrower. *United States v. Davis*, 961 F.2d 603 (7th Cir.1992); and 34 F.3d 417 (7th Cir.1993). This precedent is controlling and consistent with the Supreme Court's decision that had compared Pennsylvania and federal law in *United States v. Shimer*, 367 U.S. 374, 81 S.Ct.1554 (1961).

I therefore have decided that Petitioner still owes USDA-RD for the losses it sustained on guaranteeing the bank's loan to her. However, I am impressed that collection of this loan during the next six months would cause Petitioner great financial hardship.

Under the circumstances, I have concluded that administrative garnishment of any part of Ms. Schrauth's wages during the next six months "would cause a financial hardship to the debtor" within the meaning of the controlling regulation (31 CFR § 285.11(f)(8) (ii)). The evidence shows that Petitioner presently has limited monthly disposable income. Accordingly, administrative wage garnishment may not be pursued for the next six months. During that time, Petitioner is encouraged to undertake to come to settlement terms with the representatives of Treasury.

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

Dated: _____

Victor W. Palmer
Administrative Law Judge