

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0267

In re: NEIL BUNTYN,

Petitioner

DECISION AND ORDER DISMISSING WAGE GARNISHMENT ACTION

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the petition of Neil Buntyn (“Petitioner”) challenging the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development Agency (“Respondent”; “USDA-RD”); and if established, the propriety of imposing administrative wage garnishment.

On March 5, 2012, Petitioner timely requested a hearing before the Office of Administrative Law Judges (“OALJ”) upon notice of intent to garnish his wages. By Order issued March 29, 2012, a hearing was scheduled to commence on April 26, 2012. At the hearing, I continued the matter pending the filing of additional information by both Petitioner and USDA-RD. Both parties filed additional documents with the Hearing Clerk and the hearing was rescheduled to commence on August 1, 2012.

I held the hearing as scheduled. Michelle Tanner appeared and testified on behalf of USDA-RD, and also represented the agency. Petitioner testified, and was assisted by Robert C. Barnett, Esq. I entered into the record all of the documents filed by both parties.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law, and Order shall be entered:

FINDINGS OF FACT

1. On April 23, 2004, the Petitioner signed a Form RD-1980-21, Request for Single Family Housing Loan Guarantee. RX-1.

2. By signing the certification included in Form RD-1980-21, Petitioner agreed to reimburse USDA-RD for any loss claim paid by USDA-RD to the Lender. RX-1.
3. On April September 28, 2004, Petitioner received a loan from AMSouth Bank (“AM South”) to purchase real property located in Brandon, Mississippi. RX-2.
4. AM South assigned the loan to JP Morgan Chase Bank (“Chase”), but the Assignment of the Deed of Trust was not signed until May 5, 2008. RX-2, page 4.
5. Despite this lapse in documentation, Chase became the entity that serviced Petitioner’s loan immediately after the loan was made. PX 2; PX-4; PX-5.
6. In 2006, Chase offered Petitioner a moratorium on payments on his loan. PX-4; PX-5.
7. Thereafter, Chase found that Petitioner was in default. PX-4; PX-5.
8. On June 22, 2006, Petitioner received a letter from lawyers for Chase seeking to collect the entire principal and interest due on the loan as well as fees through foreclosure. PX 2.
9. Petitioner had tried to sell the property, but could not get clear title. PX-1.
10. The property was sold to Chase at foreclosure sale on May 13, 2009, after it spent years clearing title for itself. PX-1.
11. Chase did not appear to assist Petitioner in clearing title, nor in properly servicing the account. PX 1 through 4.
12. Chase presented a loss claim to USDA-RD, which refused to pay the claim without additional documentation. PX-1.
13. USDA-RD Loan Specialist Robert Rubin conducted an inquiry into the circumstances underlying this transaction and concurred that one of the lenders had failed to properly file the assignment of the property and failed to properly record the deed of trust. PX 1.
14. USDA-RD finally paid the loss claim to Chase on April 25, 2011. RX-6 – RX-8.

15. Chase sold the property, and USDA-RD recovered \$1,760.00 credit against the claim it paid. Id.

16. USDA-RD established the loss claim as an account payable by Petitioner. RX-9.

17. USDA-RD referred Petitioner's account to the U.S. Department of Treasury ("Treasury") for collection pursuant to applicable law. RX-10.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.

2. Petitioner's request for a hearing was timely filed.

3. The failure to properly record a deed of trust and assignment colored title to the property, and, therefore, USDA paid an entity under the guarantee agreement that had not been legally established as the holder of the note when the purported default on the account occurred.

4. Although the foreclosure action was concluded after the assignment was made, Petitioner had no recourse with respect to his account, which was not properly assigned to Chase until years after that lender evicted Petitioner.

5. Chase's initiation of a foreclosure action during a period when it (1) was not legal title holder to the real property; and (2) according to its own records, had placed Petitioner's account in a state of moratorium, is inconsistent and not supported by law.

6. There is no evidence that Petitioner was in default with Chase when it initiated foreclosure action in 2006.

7. Chase's failure to prosecute a foreclosure action for a number of years due to the flaws in legal filings demonstrates that Chase failed to comply with USDA regulations.

8. USDA-RD has failed in its burden of proof of establishing a debt in this matter.

9. Petitioner's accounts with USDA-RD and Treasury shall be abolished and no action shall be taken to collect any alleged debt related to this claim.

10. Any amount collected from the Petitioner arising out of the loss claim was improper and should be refunded to him.

11. Petitioner has not benefited from the forgiveness of a debt due to the United States, as the record does not support the existence of a debt related to a loss claim; accordingly, Petitioner has not realized imputed income and a Form 1099 cannot be issued.

12. Both Petitioner and USDA-RD may have a cause of action against Chase for its conduct with respect to this case.

Order

For the foregoing reasons, no debt being established, the wages of the Petitioner may **NOT** be subjected to administrative wage garnishment.

Any amounts collected from the Petitioner subsequent to acceleration of his account in 2006 **SHALL** be refunded.

Any account established for collection of alleged indebtedness related to the payment of a loss claim to Chase **shall be cancelled and abolished**.

No entity of the United States shall issue Petitioner a Form 1099, as Petitioner has not realized imputed income as the result of this transaction.

This matter is **DISMISSED**, with prejudice.

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

So ORDERED this 2nd day of August, 2012 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge