

United States Department Of Agriculture
Before The Secretary Of Agriculture

Docket No. 13 – 0100

In re: Kristen L. Hamby
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 December 13, 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 January 24, 2013.

RD filed its Narrative and exhibits RX-1 thru RX -5 on December 20, 2012. Upon preliminary review of the documentation, I requested that RD provide a copy of the trustee's deed for Buckingham County, Virginia. RD filed exhibits RX-6 and RX-7 on March 15, 2013 and RX-8 on March 28, 2013. A copy was mailed to Petitioner.

At the time of the place of the initial hearing date, all parties were present. At the request of the parties, the case was rescheduled to March 28, 2013.

Michelle Tanner represented Rural Development (RD) and Ms. Hamby was self represented. The parties were sworn.

Petitioner acknowledged receipt of RD's narrative and exhibits RX-1 through RX-5. RD acknowledged receipt of Petitioner's hand written narrative which denied the debt. Petitioner stated at the time of the January 24th hearing, that she was unemployed, she received child support and was a food stamp recipient. No financial statements have been received from the Petitioner.

On the date set for the continuation of the oral hearing, Petitioner could not be reached at any of the phone numbers that she had provided for contact. She also did not respond to either of the emails sent to the addresses she had provided. On the basis of the record before me the following facts and conclusions of law and order will be entered.

Findings of Fact

1. Petitioner Kristen Hamby and her husband, Russell Hamby, purchased and financed their home in Buckingham County, Virginia by borrowing money from Rural Development on August 23, 2005 in the amount of \$118,200. RX-1.
2. The loan became in default and the loan was accelerated for foreclosure on April 7, 2011. RX-2 @ p. 5 of 27 and p. 15 of 27.
3. A foreclosure sale was scheduled and held on November 22, 2011. RX-3, RX-8.
4. At the foreclosure sale, the home was purchased for \$55,870 by RD to avoid further losses. RX-3 @ p. 19 of 31 and p. 23 of 31, RX-8.
5. Prior to the judicial sale, the borrowers owed \$113,043.86 for principal, interest, and fees. After application of the sale proceeds the total amount due is \$83,185.94. (RX-4).
6. The remaining balance of funds due was submitted to treasury for collection on December 19, 2012. (RX-5 @ p. 2 of 5). The amount of \$83,803.44 is at treasury for collection, plus an additional amount of remaining potential collection fees for \$23,464.96 for a total due of \$107,268.40. RX-5 @ p. 2 of 5).
7. Petitioner is jointly and severally liable on the debt along with Russell Hamby.
8. Petitioner was unemployed as of January 24, 2013.

Conclusions of Law

1. Petitioner is jointly and severally liable to the USDA Rural Development in the amount of \$83,803.44 for the mortgage loans extended to her.
2. In addition Petitioner is jointly and severally liable for \$23,464.96 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 9 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.

April 1, 2013

James P Hurt
Hearing Officer

Copies to:
Kristen Hamby
Giovanna Leopardi
Dale Theurer