

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWG Docket No. 10-0106
)	
Noreen A. Stafford,)	
)	
Petitioner)	Decision

Pursuant to a Hearing Notice issued on February 19, 2010, I held a hearing by telephone, on April 27, 2010, at 11:00 AM Eastern local time, in consideration of a Petition seeking to dispute the terms of a proposal repayment schedule for a debt that Petitioner incurred under a Single Family Housing Mortgage Loan. Petitioner had signed a promissory note to secure a home mortgage loan given her by Respondent USDA, Rural Development, which has not been fully repaid, and has resulted in the garnishment of Petitioner's wages for nonpayment of the amount still owed.

Petitioner did not participate in the hearing. Petitioner was instructed by the Hearing Notice to file: 1. completed forms respecting her current employment, general financial information, assets and liabilities, and monthly income and expenses; 2. a narrative of events or reasons why she cannot pay the alleged debt and indicating what portion of the alleged debt she is able to pay through wage garnishment; 3. support exhibits; and 4. lists of the exhibits and witnesses who would testify in support of her petition. She was further instructed to contact my secretary, Ms. Marilyn Kennedy, and give Ms. Kennedy a telephone number where Petitioner could be reached at the time of the scheduled hearing. Petitioner failed to comply with any of the instructions. At the time of the scheduled hearing, she did not answer calls to her listed telephone.

Respondent participated in the hearing through its representatives, Gene Elkin, Legal Liaison and Mary Kimball, Accountant for the New Initiatives Branch, USDA Rural Development.

Under 31 C.F.R.

Upon consummation of the short sale, USDA Rural Development caused a discharge of mortgage to be filed with the Broome County Court that was recorded on February 22, 2000. (PX-5). The discharge of mortgage was signed before a Notary by a representative of USDA Rural Development, and it stated that the mortgage on the property: “has not been assigned and is paid and the United States of America does hereby consent that the same be discharged.” (PX-5). Based on this fact, and the fact that Respondent made no collection efforts for over 9 years from then until October 20, 2009 when the Notice of Intent to Initiate Wage Garnishment Proceedings was issued, the debt should be considered discharged. Petitioner’s attorney cites 28 U.S.C. §2415 (a) which provides that “...every action for money damages brought by the United States or an officer or agency thereof which is founded upon any contract express or implied in law or fact, shall be barred unless filed within six years after the right of action accrues....”

Respondent asserts that the nine year passage of time that would block a federal agency from filing suit, does not block a federal agency from using federal administrative wage garnishment proceedings to collect the underlying debt. However, federal administrative wage garnishment to satisfy delinquent nontax debt is governed by 31 C.F.R. § 285.11 that require consideration to be given to the financial hardship that collection of the debt would cause the debtor. (31 C.F.R. § 285.11(f)(8)(ii)). This is an ostensible requirement to consider equitable issues that may cause garnishment of the

debtor's wages to no longer be appropriate. To allow Petitioner's wages to be garnished in a proceeding that was initiated nine years after she believed the debt to have been released and discharged would be in every sense inequitable and contrary to doctrines of laches and estoppel that customarily apply when a debt is first pursued after such a long passage of time.

Under these circumstances, wage garnishment proceedings are precluded. The administrative wage garnishment proceeding initiated against Petitioner is therefore dismissed and Respondent is directed to return any sums that have been garnished to date to Petitioner. However, in accordance with 28 U.S.C. §2415 and 31 U.S.C. §3716, any sums that were obtained by means of administrative offset shall not be returned.

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

Dated: August 3, 2010

Victor W. Palmer
Administrative Law Judge