

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 10-0449

In re: Jason Allen,

Petitioner

Decision and Order

This matter is before the Administrative Law Judge upon the request of Jason Allen 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 November 24, 2010, 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 11, 2011.

The Respondent complied with that Order and a Narrative was filed, together with supporting documentation on December 14, 2010. Nothing has been received from the Petitioner and the contact information required by the Order was not provided; however, there is sufficient information available to make a decision without the necessity of a hearing.

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 January 15, 2003, Jason Allen and Carla Allen (then his wife) received a home mortgage loan in the amount of \$50,000.00 from Farmers Home Administration (FmHA) now Rural Development (RD), United States Department of Agriculture (USDA), for property located in Morley, Missouri. RX-1.
2. In 2009, subsequent to the purchase of the residence, the Petitioner and his wife divorced and as part of the division of property in the divorce, the residence was awarded to the Petitioner's ex-wife.
3. In 2009, while in sole possession of Carla Allen, the mortgage loan was defaulted upon. As part of the foreclosure proceedings, notice of the default and a notice of acceleration were sent to the borrowers at the property address.
4. Other than reference to the foreclosure proceedings and the proceeds received from the sale, the record contains none of the foreclosure pleadings. Moreover, the record contains no evidence that the Petitioner received notice of the default, acceleration of the loan, that he was provided an opportunity to cure the default, or any evidence that a deficiency judgment was taken against him.
5. Treasury offsets totaling \$107.49 exclusive of Treasury fees have been received. RX-6.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. USDA Rural Development failed in its burden of proof of establishing that the Petitioner was given actual notice of the default, the acceleration of the loan or was given an opportunity to cure any default.

3. The Petitioner is not indebted to USDA Rural Development for the balance of the indebtedness stemming from the mortgage loan extended to him.
4. Any amounts collected by Treasury prior to the entry of this Decision and Order may be retained and need not be returned.
5. As personal liability for the debt has not been established, the wages of Jason Allen may **NOT** be subjected to garnishment.

Order

For the foregoing reasons, these proceedings are terminated and the wages of Jason Allen shall **NOT** be subjected to administrative wage garnishment and the debt shall be recalled from Treasury as cancelled.

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

January 11, 2011

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Jason Allen
Mary Kimball
Dale Theurer

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