

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 11-0126

In re: Maria L. Montes,

Petitioner

DECISION AND ORDER

This matter is before me upon the request of Maria Montes 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 April 20, 2011, I issued a Prehearing Order 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.

The USDA Rural Development (RD), Respondent, complied with that Order and a Narrative was filed, together with supporting documentation on April 21, 2011.

Ms. Montes filed her financial statements on May 4, 2011 which I now label collectively as PX-1. On May 19, 2011 at the scheduled time, both parties were available for the conference call. The parties were sworn. Ms. Montes was assisted by Concepcion Viramontes in this oral hearing. Following the hearing, I requested that Ms. Kimball file a revised paragraph 3 of her narrative which more closely follows RD exhibit RX-6 as Revised Narrative and the same was received on June 7, 2011. Ms. Montes advised that she was involuntarily terminated from her employment prior to the 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 June 20, 1997, Dario and Maria Montes, the Petitioner obtained a \$ 55,000.00 USDA FmHA loan for a primary residence located at 21## Commander Dr., Lake Havasu City, AZ 864##.¹ The Petitioner signed a promissory note and a mortgage. RX-1, RX-2.
2. Petitioner, Maria Montes stated that she transferred her remaining interest to Dario Montes. Ms. Montes did not obtain a release of her obligation on the June 20, 1997 note and remained jointly and severally liable.
3. The borrowers defaulted on the loan and on January 5, 2008, she was mailed a notice of acceleration to her last known address. RX-4.
4. A Notice of a Trustee's sale was published and the property was sold at public auction on November 3, 2009. Narrative, RX-6.
5. At the time of the sale, Ms. Montes jointly and severally owed a total of \$56,373.63, including principal, interest and fees. Narrative, RX-6, RX-7.
6. After the sale, a escrow account refund of \$265.20 was credited to borrower. Narrative, RX-6
7. After application of the sale proceeds, Ms. Montes jointly and severally owed \$2,116.43, plus pre-foreclosure fees of \$1,422.67 for a total of \$3,539.10. Narrative, RX-6.
8. The remaining unpaid debt is in the amount of \$3,539.10 exclusive of potential Treasury fees. Narrative, RX-6.

¹ Complete address maintained in USDA files.

9. The remaining potential treasury fees are \$990.95. RX-7.
10. Ms. Montes has been involuntarily unemployed since March 2011.

Conclusions of Law

1. Maria Montes is indebted to USDA Rural Development in the amount of \$3,539.10 for the mortgage loan extended to her.
2. Maria Montes is indebted to the US Treasury for potential fees in the amount of \$990.95.
3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.
4. The Respondent is **not** entitled to administratively garnish the wages of the Petitioner until she has been gainfully employed for a period of one year. After one year, RD may review the then existing financial statements and assess the legal entitlement to garnish her wages.

Order

For the foregoing reasons, the wages of Maria Montes shall **not** be subjected to administrative wage garnishment until she has been gainfully employed for a period of one year.

After one year, RD may re-assess Ms. Montes's financial position.

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

Done at Washington, D.C.
June 9, 2011

JAMES P. HURT
Hearing Officer

Copies to:

Mary Kimball
Dale Theurer

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue SW
Room 1031, South Building
Washington, D.C. 20250-9203
202-720-4443
Fax: 202-720-9776