

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0314

In re: MARICELLA ARVIZU,

Petitioner

DECISION AND ORDER DISMISSING WAGE GARNISHMENT ACTION

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the request of Maricella Arvizu (“Petitioner”) for a hearing to address 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 26, 2012, Petitioner timely requested a hearing before the Office of Administrative Law Judges (“OALJ”). By Order issued March 30, 2012, a hearing was scheduled and the parties were directed to provide information and documentation to the Hearing Clerk for the Office of Administrative Law Judges for the United States Department of Agriculture (“Hearing Clerk”). On April 25, 2012, Respondent filed a Narrative, together with supporting documentation (“RX-1 through RX-8”). On May 7, 2012, Petitioner’s counsel filed argument and a signed Consumer Debtor Financial Statement, identified herein as “PX-1 and PX-2”.

The hearing commenced on May 31, 2012, at which time I admitted the parties’ documents to the record. Petitioner was represented by Jim L. Johnston, Esq. Michelle Tanner of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri, represented Respondent. Both Petitioner and Ms. Tanner credibly testified.

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 September 5, 2008, the Petitioner and a co-Borrower signed a Form RD-1980-21, Request for Single Family Housing Loan Guarantee. RX-1.
2. Subsequently, on September 25, 2008, Petitioner and co-Borrower signed a Promissory note for a loan from JP Morgan Chase Bank, N.A. (“Lender”) to purchase real property located in Tucson, Arizona. RX-2.
3. 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.
4. The certification from the Lender stating that it had adhered to all regulatory requirements in the grant of the home loan, found on Form RD-1980-21, was first signed on September 5, 2008, and then struck and resigned on September 10, 2008.
5. Both names signed on behalf of the Lender are indecipherable.
6. When Petitioner signed the Form RD-1980-21, she signed a blank form, with no information regarding the loan.
7. The loan fell into default and the Lender initiated foreclosure proceedings. 2006. RX-3.
8. At foreclosure sale held on April 4, 2011, the property was sold to a third party for \$89,251.00. RX-3.
9. At the time of the sale, the amount due on Petitioner’s loan was \$206,273.93, comprised of principal, interest, fees, and costs related to the foreclosure and sale. RX-4; RX-5.
10. USDA-RD paid a loss claim of \$108,579.79 to the Lender. RX-4; RX-5.
11. The claim was established as a debt on Petitioner’s account. RX-6.

12. USDA-RD sent notice of the claim to Petitioner at the co-Borrower's address, and she had no knowledge of the payment of the loss claim until she received notice of intent to garnish her wages. RX-7.

13. USDA-RD referred Petitioner's account to the U.S. Department of Treasury ("Treasury") for collection pursuant to applicable law. RX-8.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. Petitioner's request for a hearing was timely filed.
3. The signed certification by the Lender that Petitioner's loan was underwritten in compliance with all Agency loan requirements is deficient in that it was signed twice on two separate dates.
4. Since the first certification by the Lender was signed on the same date as Petitioner signed a blank document, it is not credible that the Lender could certify that it had complied with USDA regulations.
5. The striking out of the first signature and subsequent hand-written second signature falls far short of the legal standard for certifying the Lender's adherence with federal regulations, which is necessary for the Lender to qualify for USDA-RD's guarantee of Lender's loan to the Petitioner.
6. The invalid certification by the Lender failed to establish a valid obligation of Respondent USDA-RD to pay the Lender.
7. Petitioner is NOT obligated to pay USDA-RD, as the evidence fails to establish a valid debt.

8. USDA-RD may have a cause of action for collection on the invalid loss claim presented by the Lender and paid by USDA-RD.
9. The procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have NOT been met.
10. USDA-RD/Treasury may NOT collect from Petitioner any amounts on this account, by income tax offset, administrative wage garnishment, or any other manner.
11. The account in Petitioner's name at Treasury should be recalled by USDA-RD and administratively cancelled.

ORDER

This matter is DISMISSED, with prejudice.

Neither Treasury nor USDA-RD may collect any amount on Petitioner's account as this is not a valid debt due from Petitioner to the United States.

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

So ORDERED this 1st day of June, 2012 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge