

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 09-0119

In re: KATHY MOSER,

Petitioner

DECISION AND ORDER

This matter is before the Administrative Law Judge upon the request of the Petitioner, Kathy Moser, 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 May 29, 2009, a Prehearing Order was entered to facilitate a meaningful conference with the parties as to how the case will be resolved and to direct the exchange of information and documentation concerning the existence of the debt.

The Respondent complied with that Order and a Narrative was filed, together with supporting documentation on June 12, 2009. The Petitioner failed to file anything further with the Hearing Clerk and repeated efforts to reach her by telephone were unsuccessful.¹ At the time she requested a hearing, the Petitioner indicated that “After foreclosure, Chase Bank indicated that I owed nothing. My tax refunds were then taken for two years and no one has explained what debt I owe. I want a full accounting and a full hearing.

¹ The file reflects that repeated efforts were made to contact the Respondent by phone and that messages were left for her at the number she provided on at least two occasions.

There is no reason to schedule this hearing until I have been furnished with the full accounting and have had time for my lawyer and CPA to review it.” On September 18, 2009, an Order was entered directing the Petitioner to provide a working telephone number so that a hearing could be scheduled; however, the time set forth in the Order expired without the Petitioner’s compliance. Nothing further having been received from the Petitioner, the request for hearing will be considered waived and the issues before me will be decided upon the record.

The Narrative filed by the Respondent reflects that foreclosure proceedings were brought by the lender against the Petitioner and the property was sold in a foreclosure sale. USDA however was not a party to that action and the debt that is being sought to be collected arises under the Request for Single Family Housing Loan Guarantee signed by the Petitioner by which she agreed to reimburse the agency in the event a loss claim was paid on the loan. As a result of the foreclosure action, USDA Rural Development was obligated to pay the lender the sum of \$32,963.16 for accrued interest, protective advances, liquidation costs and property sale costs. The amount due has been reduced by six Treasury Offsets amounting to \$6,877.07 leaving \$26,086.09 due at this time.

On the basis of the record before me, nothing further having been received from the Petitioner, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On July 14, 2005, the Petitioner, Kathy Moser, applied for and received a home mortgage loan guarantee from the United States Department of Agriculture (USDA) Rural Development (RD) (Exhibit RX-1) and on September 27, 2005 obtained a home

mortgage loan for property located at 113 Miles Drive, Lancaster, Kentucky 40444 from J.P. Morgan Chase Bank, N.A. (Chase) for \$69,992.00 (Loan Number 1082572257).

2. In 2006, the Petitioner defaulted on the mortgage loan and foreclosure proceedings were initiated. RX-3.

3. Chase purchased the secured property at the foreclosure sale on December 1, 2006 for \$60,350.00. The property was listed for sale by Chase, but did not sell within the marketing period and Chase submitted a loss claim. USDA paid Chase the sum of \$32,963.16 for accrued interest, protective advances, liquidation costs and property sale costs. RX-3, 4.

4. Treasury offsets totaling \$6,877.07 have been received. Narrative, p 2.

5. The remaining unpaid debt is in the amount of \$26,086.09.

Conclusions of Law

1. The Petitioner, Kathy Moser, is indebted to USDA Rural Development in the amount of \$26,086.09 for the mortgage loan guarantee extended to her, further identified as Loan account number 1082572257. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

2. The Respondent is entitled to administratively garnish the wages of the Petitioner.

Order

For the foregoing reasons, the wages of the Petitioner, Kathy Moser, shall be subjected to administrative wage garnishment at the rate of 15% of disposable pay, or such lesser amount as might be specified in 31 C.F.R. § 285.11(i).

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

Done at Washington, D.C.
October 29, 2009

PETER M. DAVENPORT
Administrative Law Judge

Copies to: Kathy Moser
Mary Kimball
Dale Theurer

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