

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Teresa Y. Duffy,) AWG Docket No. 10-0273
)
)
Petitioner)

Final Decision and Order

This matter is before me upon the request of the Petitioner, Teresa Y. Duffy, for a hearing in response to efforts of Respondent, USDA’s Rural Development Agency, to institute a federal administrative wage garnishment against her. On June 10, 2010, I issued a Order requiring the parties to exchange information concerning the amount of the debt.

I conducted a telephone hearing on July 9, 2010. Rural Development was represented by Mary Kimball who testified on behalf of the agency. Ms. Duffy was present and presented her position. The witnesses were sworn.

Rural Development filed a copy of its Narrative along with exhibits RX-1 through RX-5 on June 25, 2010. In the Narrative submitted on this date, Rural Development stated that “a short sale was held on 06/03/08” with USDA receiving \$64,312.00 from the sale. On July 27, 2010, Ms. Duffy filed a copy of her Consumer Debtor Financial Statement and other documents documenting her financial position.

During the hearing, Rural Development indicated that Ms. Duffy obtained two loans from Rural Development to purchase her house. The second loan was not reflected in the exhibits it provided pursuant to my June 10 Order. Ms. Duffy indicated that she

believed she only obtained one loan. I requested that Rural Development provide the documentation for the second loan. On August 16, 2010, Rural Development filed a revised Narrative. This revised Narrative indicates that Ms. Duffy's house was not subject to a short sale but rather Rural Development foreclosed on the property. Because the rights and protections that accrue to a debtor under a foreclosure are different than the rights under a short sale, I am concerned with Rural Development's cavalier approach to the facts in this case. Had I not requested additional information on the second loan, which Rural Development failed to include in its original filing, I would have decided this case on inaccurate information.

Rural Development has the burden to prove both the existence of the debt and the amount of the debt. Georgia law requires that:

When any real estate is sold on foreclosure, without legal process, and under powers contained in security deeds, mortgages, or other lien contracts and at the sale the real estate does not bring the amount of the debt secured by the deed, mortgage, or contract, no action may be taken to obtain a deficiency judgment unless the person instituting the foreclosure proceedings shall, within 30 days after the sale, report the sale to the judge of the superior court of the county in which the land is located for confirmation and approval and shall obtain an order of confirmation and approval thereon.

Ga. Code Ann., § 44-14-161.

Rural Development has not demonstrated it complied with this requirement before initiating its efforts to collect on the deficiency. Without a confirmation order from a

superior court judge in Henry County, Georgia, Rural Development had no legal authority to seek collection of the deficiency resulting from the foreclosure of Ms. Duffy's home.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of the Fact

1. On May 24, 2002, Teresa Y. Duffy received a USDA Farmers Home Administration in the amount of \$80,960.00. At the same time she received a second loan in the amount of \$18,044.00. The loans were used to purchase a residence at 139 Hampton Oaks Drive, Hampton, GA 20228. (Narrative; RX-1).

2. Ms. Duffy defaulted on the loan and a non-judicial foreclosure sale was held on June 3, 2008. (RX-4A).

3. USDA received \$64,312.00 from the sale of the house. Subsequent receipts from Treasury were \$4,413.91. (Narrative.)

4. USDA failed to comply with Georgia state law to perfect its claim for the deficiency.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction over the parties, Ms. Duffy and USDA Rural Development Agency; and over the subject matter, which is administrative wage garnishment.

2. Because Rural Development failed to comply with Georgia state law and obtain a confirmation order from a superior court judge in Henry County, Georgia, Petitioner Teresa Y. Duffy is not indebted to USDA's Rural Development Agency in any amount.

3. In absence of a proven indebtedness, USDA's Rural Development Agency is NOT entitled to administratively garnish the wages of the Petitioner, Teresa Y. Duffy. Furthermore, because USDA's Rural Development Agency had no authority to collect the deficiency resulting from the foreclosure of Ms. Duffy's home, Rural Development shall refund to Ms. Duffy all amounts already collected and used to satisfy the deficiency.

Order

For the foregoing reasons, the administrative wage garnishment proceedings against Teresa Y. Duffy shall be terminated and dismissed. Money already collected by Rural Development shall be refunded to Ms. Duffy.

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

Done at Washington, D.C.
this 24th day of August 2010

STEPHEN M. REILLY
Hearing Official