

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA HOUSING FINANCE AGENCY

In the Matter of the Revenue Recapture
of Sara Oldre, f/k/a Sara Galle-Jensen

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for an evidentiary hearing before Administrative Law Judge Ann O'Reilly on November 30, 2012, via telephone conference, at the office of the Office of Administrative Hearings. The hearing record closed on December 4, 2012, upon an additional submission to Exhibit A.

Darryl Henchen, Assistant Attorney General, appeared on behalf of the Minnesota Housing Finance Agency ("MHFA"). Sara Oldre, formerly known as Sara Galle-Jensen ("Respondent"), appeared on her own behalf and without legal counsel.

STATEMENT OF THE ISSUES

(1) Whether Respondent is in default of the terms and conditions of a Loan Note and Mortgage endorsed and assigned to the MHFA, rendering her liable to the MHFA for the repayment of monies received.

(2) Whether the MHFA is entitled to offset the amount owed by Respondent using revenue recapture in accordance with Minn. Stat. Chap. 270A.

The Administrative Law Judge concludes that Respondent is in default of the Loan Note and that the Agency is entitled to offset the remaining amount owed by Respondent under the Loan Note in accordance with Minn. Stat. Chap. 270A.

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. United Prairie Bank-Spicer ("UPB") is a lender approved by the MHFA to participate in the MHFA Fix-Up Fund Loan Program ("Fix-Up Program").¹ Under the

¹ Ex. E.

Fix-Up Program, UPB originates mortgage loans and then assigns the loan notes and mortgages to the MHFA.²

2. On November 18, 2005, Respondent and her then husband, Matthew Jensen (“Jensen”), jointly executed a Loan Note and Mortgage for a MHFA Fix-Up Fund Loan (“Loan”).³ The original principal amount of the Loan was \$24,000.⁴ The Mortgage was filed with the Kandiyohi County Recorder’s Office on November 28, 2005, as Document No. 535673, as security for the Loan.⁵

3. The funds borrowed were used to renovate real property located at 22491 53rd Street N.W., Sunburg, MN 56289 (“Property”).⁶ The Fix-Up Loan Mortgage was a junior mortgage on the Property, subordinate to a prior purchase money mortgage in the amount of \$129,000, held by Wilshire Credit of its assign.⁷

4. UPB originated and disbursed the proceeds of the Loan to Respondent and Jensen.⁸

5. UPB then endorsed and sold the Loan Note to the MHFA, and UPB assigned the Mortgage to the MHFA.⁹ The Assignment of Mortgage, dated November 18, 2005, was filed with the Kandiyohi County Recorder’s Office on November 29, 2005, as Document No. 565674.¹⁰

6. On March 20, 2007, Respondent and Jensen filed a Joint Petition, Agreement, and Judgment and Decree for Marriage Dissolution Without Children with the Kandiyohi District Court (“Petition” or “Decree” or “Petition and Decree”).¹¹ Respondent and Jensen prepared the Petition without the assistance of legal counsel and submitted it to the court for execution and filing.¹²

7. The Decree awarded Jensen all right, title, and interest in the Property.¹³ The Decree further provided that the Loan Note and Mortgage shall be paid by Jensen starting on February 1, 2007.¹⁴

8. After the divorce, Respondent tried but was unable to get her name removed from the two mortgages on the Property.¹⁵

² *Id.*

³ Exs. A-1 and B.

⁴ Ex. A-1.

⁵ Ex. B.

⁶ Exs. B and D; See also Testimony of Sara Oldre.

⁷ Test. of S. Oldre; Testimony of Matthew Jensen; See also, Ex. 1.

⁸ Ex. E.

⁹ Exs. A-1, C, and E.

¹⁰ Ex. C.

¹¹ Ex. 1.

¹² *Id.*; Test. of S. Oldre.

¹³ Ex. 1.

¹⁴ *Id.*

¹⁵ Test. of S. Oldre.

9. The Loan Note required Respondent and Jensen to make 239 monthly payments of \$161.80 on the 20th day of each month, commencing December 20, 2005, with a final payment of \$162.16 on November 20, 2025.¹⁶

10. The Loan Note provides that failure to make payment when due or in the full amount shall be a default.¹⁷ The Loan Note further provides:

Setoff.

If I am in default, you may take the money from any of my accounts with you to pay this agreement. For this purpose, my accounts include all accounts to which I am a party. This may be done without notifying me.¹⁸

11. Jensen stopped making Loan payments in 2008 when he was hospitalized for a mental illness and has remained disabled since that time.¹⁹ To protect her credit, Respondent took over making the monthly mortgage payments.²⁰

12. Respondent made monthly loan payments through January 2012, but failed to make any further payments thereafter.²¹

13. Sometime in 2012, the first mortgagee, Wilshire Credit or its assign, foreclosed its mortgage on the Property.²² A foreclosure sale resulted in a deficiency, and the MHFA's junior Mortgage lien was left unsatisfied.²³

14. As of September 30, 2012, the outstanding balance on the Loan Note was \$18,363.73, including accrued and unpaid interest.²⁴

15. On August 27, 2012, the MHFA sent Respondent written notice of its intent to recover the outstanding Loan balance through revenue recapture pursuant to the Minnesota Revenue Recapture Act, Minn. Stat. Chap. 270A.

16. On or about September 22, 2012, Respondent timely requested a contested case hearing.²⁵

17. The MHFA has not initiated collection action against Jensen.²⁶

¹⁶ Ex. A-1.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Test. of S. Oldre; Test. of M. Jensen.

²⁰ Test. of S. Oldre; Ex. 2.

²¹ Exs. E and 2.

²² Test. of S. Oldre; Test. of M. Jensen.

²³ *Id.*

²⁴ Ex. E.

²⁵ See Notice and Order for Hearing.

²⁶ Test. of M. Jensen.

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction in this matter pursuant to Minn. Stat. §§ 270A.08 and 270A.09.
2. The Notice and Order of Hearing was proper, and the MHFA has fulfilled all of the relevant procedural requirements.
3. Respondent and Jensen jointly executed a Loan Note with UPB that was endorsed to, and purchased by, the MHFA. Consequently, Respondent and Jensen are jointly and severally liable for repayment of the Loan debt.
4. By failing to make monthly payments after January 2012, Respondent and Jensen are in default under the Loan Note.
5. As a result, Respondent and Jensen jointly and severally owe \$18,363.73 to the MHFA under the Loan Note.
6. The Minnesota Revenue Recapture Act, Minnesota Statutes Chapter 270A, authorizes state agencies, such as the MHFA, to collect debts owed to it by filing a claim with the Minnesota Department of Revenue. The Department of Revenue may collect amounts due to the MHFA by setting off the amount of such debt from refunds due to debtors.²⁷ Refunds include individual income tax refunds, political contribution refunds, property tax credits or refunds, and lottery prizes of \$600 or more.²⁸
7. The collection remedy provided by the Revenue Recapture Act is in addition to, and not in substitution for, any other remedy available by law.²⁹
8. The MHFA is entitled to offset the amount it is owed by Respondent under the Loan Note (\$18,363.73) using revenue recapture under Minnesota Statutes Chapter 270A.

Based upon the hearing record, the Administrative Law Judge makes the following:

ORDER

1. Respondent is in default of the terms and conditions of the Loan Note and owes the MHFA \$18,363.73.

²⁷ Minn. Stat. § 270A.06 (2012).

²⁸ Minn. Stat. § 270A.03, subd. 7 (2012); Minn. Stat. § 349A.08, subd. 8 (2012).

²⁹ Minn. Stat. § 270A.04, subd. 1 (2012).

2. The MHFA is entitled to proceed to offset the amount owed by Respondent under the Loan Note (\$18,363.73) through the Minnesota Revenue Recapture Program.

Dated: December 27, 2012

/s/ Ann O'Reilly

ANN O'REILLY
Administrative Law Judge

Reported: Digitally recorded; no transcript prepared.

NOTICE

This Order is the final decision in this matter pursuant to Minn. Stat. § 270A.09, subd. 3. Any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 to 14.68.

MEMORANDUM

Respondent does not challenge the validity of the Loan Note or the remaining amount due to the MHFA on the Loan. Rather, Respondent contends that her dissolution Decree, a court order, absolves her from liability under the Loan Note. Unfortunately for Respondent, the law does not comport with her argument.

As a co-borrower under the Loan Note, Respondent became jointly and severally liable with Jensen for the monies loaned under that contract. Minnesota Statutes Section 548.20 prescribes joint and several liability for cases such as this:

All parties to a joint obligation, including negotiable paper, copartnership debts, and all contracts upon which they are liable jointly, shall be severally liable also for the full amount thereof. They may be sued thereon jointly, or separate actions may be brought against each of any of them, and judgment rendered in each, without barring an action against any of those not included in such judgment, or releasing any of those not sued....

“Joint and several liability” is defined by Black’s Law Dictionary as follows:

...[T]he liability of copromisors of the same performance when each of them, individually, has the duty of fully performing the obligation, and the obligee can sue all or any of them upon breach of performance. A liability is said to be joint and several when the creditor may demand payment or

sue one or more of the parties to such liability separately, or all of them together at his option. A joint and several bond or note is one in which the obligors or makers bind themselves both jointly and individually to the obligee or payee, so that all may be sued together for its enforcement, or the creditor may select one or more as the object of his suit.³⁰

Under the doctrine of joint and several liability, Respondent remains individually (as well as jointly) liable to the MHFA for the entire amount owed under the Loan Note.

Respondent's divorce Decree does not negate Respondent's liability to the MHFA under the Loan Note. The Loan Note is a legally binding contract between the MHFA and Respondent and Jensen. As such, the Loan Note dictates the legal obligation of Respondent and Jensen to the MHFA, not the legal obligations of Jensen and Respondent to each other.

In contrast, Respondent's dissolution Petition and Decree is a valid and binding agreement between Respondent and Jensen, dictating the financial obligations between the parties to that contract, namely, Respondent and Jensen. The Decree does not bind the MHFA, a non-party in the divorce action.

Under the terms of the divorce Petition, Jensen agreed to assume liability for the MHFA debt. The Petition and Decree only dictate the obligations for the payment of debt as between Respondent and Jensen. It does not bind the MHFA and does not prevent the MHFA from pursuing collection action against Respondent under the Loan Note.

The Decree does, however, entitle Respondent to enforce the terms of the Petition and bring legal action against Jensen for reimbursement of her MHFA liability. Thus, Respondent can bring a court action against Jensen to recover all amounts collected from her by the MHFA through revenue recapture. This is of little consolation to Respondent who contends that Jensen is essentially judgment proof. However, the law and respective liabilities of the parties under the two separate contracts are clear and well-established.

Similarly, neither Respondent's relinquishing of her interest in the Property through the divorce, nor the loss of the Property through the foreclosure process, released Respondent from her repayment obligation under the Loan Note. The Loan Note is Respondent's legally binding written promise to repay a debt to the MHFA by a specified date. The Mortgage, on the other hand, is a written instrument creating an interest in real property as security (or collateral) for the payment of the debt. Thus, the extinguishment of the Mortgage through foreclosure by a prior and superior lien holder did not relieve Respondent's obligations under the Loan Note – a separate and distinct contract.

³⁰ Black's Law Dictionary 6th Edition Abridged (1991).

The Revenue Recapture Act provides state agencies, like the MHFA, a unique and powerful collection mechanism not available to private creditors. Because Respondent remains liable under a contract with the MHFA, the MHFA is authorized to pursue revenue recapture to collect the debt.

A. C. O.