

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jessica M. Rath,	:	
	:	
Petitioner	:	
	:	No. 1092 C.D. 2010
v.	:	
	:	Submitted: January 7, 2011
Pennsylvania Housing Finance Agency,	:	
Respondent	:	

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: March 3, 2011

In this doleful appeal, Jessica M. Rath (Homeowner) petitions for review from an order of the Pennsylvania Housing Finance Agency (Agency) that denied her application for emergency mortgage assistance under the act popularly known as the Homeowner’s Emergency Mortgage Assistance Loan Program (HEMAP or Act 91).¹ The Agency denied Homeowner’s loan application after finding no reasonable prospect of Homeowner’s resuming full mortgage payments within 36 months of the date of the mortgage delinquency. Homeowner, representing herself, contends the Agency erred and abused its discretion in

¹ Act of December 3, 1959, P.L. 1688, and added by the Act of December 23, 1983, P.L. 385, as amended, 35 P.S. §§1680.401c-1680.410c. The purpose of Act 91 is “to establish a program which will through emergency mortgage payments prevent widespread mortgage foreclosures ... which result from default caused by circumstances beyond a homeowner’s control.” Crawl v. Pa. Hous. Fin. Agency, 511 A.2d 924, 927 (Pa. Cmwlth. 1986) (emphasis in original).

denying her application and in determining she is in an ongoing rather than emergency mortgage situation.² Upon review, we affirm.

In 2000, Homeowner and her former husband, Robert S. Rath (Spouse), purchased a residential property in Dresher, Montgomery County, for \$212,000. In September, 2001, they refinanced with Bank of America. They financed \$202,000, which resulted in a monthly mortgage payment of \$2,149.92 (First Mortgage). In 2006, Spouse executed a second mortgage with Green Tree in the amount of \$100,000, with monthly payments of \$214.23 (Second Mortgage). Second Mortgage is in Spouse's name.

Prior to 2009, Homeowner did not work; rather, she stayed at home to care for her three children. Homeowner has an autistic son and two younger daughters. Spouse, the sole provider, owned a cake decorating business. Spouse began physically abusing Homeowner. In May, 2009, the police arrested Spouse for assault. Homeowner obtained a protection from abuse order preventing Spouse from coming near her or the home. Thereafter, Homeowner filed for divorce. Spouse has not returned to the home, and he informed Homeowner that he wanted to sell the property. Spouse also stopped making payments on the First Mortgage.

By September, 2009, Homeowner and Spouse were six months delinquent on the First Mortgage. Homeowner then applied for an emergency mortgage assistance loan under Act 91. At time of application, the October, 2009, payment became due on the Second Mortgage.

² By order dated December 29, 2010, this Court precluded Agency from filing a brief.

In October, 2009, the Agency denied Homeowner's request for a HEMAP loan. See Certified Record (C.R.) at Item No. 29 (Denial Notice). The Agency provided the following two reasons (with emphasis added):

1. No reasonable prospect of [Homeowner] resuming full mortgage payments within thirty-six (36) months from the date of the mortgage delinquency and paying the mortgage(s) by maturity based on: The circumstances do not qualify as an Emergency Mortgage Assistance situation but rather an ongoing situation which severely limits the probability of resumption of payments and payment of mortgage by maturity. [Homeowner's] future ability to generate sufficient income to maintain the total monthly expenses is unknown.

2. No reasonable prospect of [Homeowner] resuming full mortgage payments within thirty-six (36) months from the date of the mortgage delinquency and paying the mortgage(s) by maturity based on: [Homeowner's] income is insufficient to maintain mortgage. [Homeowner's] total monthly expenses (\$4,385.15) exceed the net monthly income (\$514.00) by \$3,871.15.

Id.

Homeowner filed an administrative appeal, and a hearing examiner reviewed her application and financial information. Thereafter, the hearing examiner issued a decision affirming the initial denial of Homeowner's request for a HEMAP loan. Homeowner petitions for review.³

³ Our review of the Agency's denial of an application for a HEMAP loan is limited to determining whether substantial evidence supports the Agency's findings of fact or whether the Agency committed an error of law or violated the applicant's constitutional rights. Fish v. Pa. Hous. Fin. Agency, 931 A.2d 764 (Pa. Cmwlth. 2007).

Homeowner contends the Agency erred and abused its discretion by determining she is in an “ongoing” as opposed to an “emergency” mortgage situation. The Agency, Homeowner argues, did not address the emergency mortgage situation issue, did not discuss the criteria for an emergency situation, and did not explain why her situation did not constitute an emergency. To that end, Homeowner asserts the Agency overlooked the fact that she suffered a sudden loss of income when her marriage dissolved and she did not receive the expected support.

Homeowner further asserts she will be able to resume full mortgage payments within 36 months of delinquency for several reasons: her divorce will be final and her equitable distribution award will provide sufficient funds; Spouse must make up the support arrearages; her child support will continue, and she will continue receiving Social Security benefits for her son; and, she will be able to get a better job.

To qualify for a HEMAP loan, a homeowner must demonstrate she meets the eligibility criteria in Act 91. Coyne v. Pa. Hous. Fin. Agency, 826 A.2d 925 (Pa. Cmwlth. 2003); Crawl v. Pa. Hous. Fin. Agency, 511 A.2d 924 (Pa. Cmwlth. 1986). Section 404-C(a) of Act 91 (eligibility for assistance) pertinently provides:

(a) No assistance may be made with respect to a mortgage or mortgagor under this article unless all of the following are established:

* * *

(5) The agency has determined that there is a reasonable prospect that the mortgagor will be able to resume full

mortgage payments within twenty-four (24) months after the beginning of the period for which assistance payments are provided under this article and pay the mortgage or mortgages in full by its maturity date or by a later date agreed to by the mortgagee or mortgagees for completing mortgage payments.

35 P.S. §1680.404c(a)(5). Section 405-C(f.1) of Act 91 extends the 24-month limit on mortgage assistance to 36 months, where as here, Pennsylvania's unemployment rate exceeds 6.5% at the time of the homeowner's HEMAP loan application. 35 P.S. §1680.405(c)(f.1).

After careful review, we find no error or abuse of discretion in the hearing examiner's decision to affirm the initial denial of Homeowner's application for mortgage assistance. The hearing examiner explained her decision as follows (with emphasis added):

At application [Homeowner] was receiving an income of \$514 [per month]. At appeal hearing, her income totaled \$1,870.04 [per month]. Support was court ordered in the amount of \$4,016.28 [per month] (child support, spousal support and contribution to mortgage payments). However, [Homeowner] stated that she believes [Spouse] is refusing to pay the support. According to the 2006 joint Federal Income Tax Return [Spouse] was/is self employed. The average net monthly income during 2006 was \$2,470. The monthly mortgage payment is \$2,149.92 (primary mortgage payment) and represents 87% of the joint income during 2006. In 2007 and 2008 [Homeowner and Spouse] did not file a federal tax return. [Homeowner's] 2009 federal return reflected an annual income of \$2,011. The overall monthly expenses reported at the time of application totaled \$4,385.15, which surpassed the joint income of record. The current monthly expenses total \$4,401.40. [Homeowner] indicated on March 3, 2010 that she still had not received a support payment. Based on the income history, the

income at application and the current net monthly income it does not appear likely that [Homeowner] will be able to fully resume and maintain the monthly obligations. Receipt and steadiness of support must remain speculative at this time. Therefore, the mortgage assistance loan was properly denied on the basis: No reasonable prospect of [Homeowner] resuming full mortgage payments with thirty-six (36) months from the date of the mortgage delinquency and paying the mortgages by maturity. [See Section 404-C(a) of Act 91, 35 P.S. §1680.404c(a) (eligibility for assistance)].

Hr'g Exam'r's Op. at 5.

As the hearing examiner noted, Homeowner's monthly expenses at the time of the appeal hearing: mortgages and utilities (\$2,539.15), installment debt (\$1,175.00) and living expenses (\$687.25), greatly exceeded her monthly income of (\$1,870.04). The record supports these findings.

Nonetheless, Homeowner contends her financial problems are temporary and that her equitable distribution award will enable her to resume full mortgage payments within 36 months from the date of mortgage delinquency. Unfortunately, she offers no further detail as to the amount, timing, or source of payment of such an award.

The hearing examiner considered a handwritten note from Homeowner and found that there is a December, 2009, court order directing Spouse to pay Homeowner \$1080.00 per month for child support for three children, \$1,848.28 per month for spousal support, and \$993.47 per month toward the mortgage. See C.R. at Item No. 37 (Assorted Documentation).

However, the hearing examiner also noted, at the time of the appeal hearing, Homeowner had not received any support payments. Therefore, the hearing examiner found (with emphasis added), “Receipt and steadiness of support must remain speculative at this time.” Hr’g Exam’r’s Op. at 5. Where the Agency bases its determination that there is no reasonable prospect that a mortgagor will be able to resume monthly mortgage payments on a finding that her asserted income is too speculative, we will not find error or an abuse of discretion. R.M. v. Pa. Hous. Fin. Agency, 740 A.2d 302 (Pa. Cmwlth. 1999).

Here, Homeowner testified that in December, 2009, a court ordered Spouse to begin making support payments in the amount of \$4,016.28 per month. Notes of Testimony, 2/18/10, at 8. However, Homeowner did not know if Spouse is appealing the support order. Id. at 9. Homeowner also stated at the hearing that she “believed” Spouse could make the support payment and that Spouse told her he was employed. Id. Nonetheless, as of March, 2010, Spouse had yet to make a payment. Hr’g Exam’r’s Op. at 5. The hearing examiner’s decision adequately explains why Homeowner’s mortgage situation must be considered ongoing *at this time*.

Given these lamentable circumstances, we find no error or abuse of discretion in the hearing examiner’s determinations that Homeowner’s mortgage situation is ongoing and that there is no current, reasonable prospect she will be able to resume monthly mortgage payments within 36 months of delinquency. R.M.; see also Cullins v. Pa. Hous. Fin. Agency, 623 A.2d 951 (Pa. Cmwlth. 1993) (Agency cannot base its determination on speculative income; where appellants’

total debt service most recently equaled 88% of their net income, their prospects appeared poor for resumption of mortgage payments within 36 months).

In addition, where a mortgage delinquency is the result of a violation of a court-ordered separation agreement, it cannot be considered an emergency situation, but rather a domestic issue resulting from the marital separation. Chiulli v. Pa. Hous. Fin. Agency, 509 A.2d 974 (Pa. Cmwlth. 1986). In such cases, the mortgagor must present some evidence of actions taken to require the spouse to comply with the court order. Id. Here, Homeowner failed to present evidence of any action taken to enforce the support order.

For these reasons, we are compelled to affirm the Agency's order.

ROBERT SIMPSON, Judge

