

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Jeanne Scandura,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
Pennsylvania Housing	:	No. 467 C.D. 2009
Finance Agency,	:	Submitted: October 16, 2009
	:	
Respondent	:	
	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE JOHNNY J. BUTLER, Judge  
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY  
SENIOR JUDGE FLAHERTY

FILED: February 16, 2010

Jeanne Scandura (Scandura) petitions for review from an adjudication of the Pennsylvania Housing Finance Agency (Agency) which affirmed the rejection of Scandura’s application for emergency mortgage assistance under the Homeowner’s Emergency Mortgage Assistance Act (Act).<sup>1</sup> We affirm.

On May 1, 2008, Countrywide Home Loans (Countrywide) notified Scandura that the mortgage on her home at 1925-27 Panama Street (Panama property) in Philadelphia was in serious default because she had

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<sup>1</sup> Act of December 3, 1959, P.L. 1688, as amended, 35 P.S. §§ 1680.401c-1680.410c.

not made monthly mortgage payments. Scandura applied for emergency mortgage assistance, which application was denied by the Agency on August 29, 2008. Scandura appealed and a hearing was conducted before a hearing examiner, at which Scandura testified and presented evidence.

The hearing examiner made the following findings of fact. In March of 2005, Scandura entered into a mortgage with Countrywide on the Panama property in the amount of \$861,000.00. The thirty-year loan has a \$5,190.00 monthly payment. Part of the proceeds were used to pay off an existing mortgage in the amount of \$495,000.00 and the remainder of the proceeds were used by Scandura to renovate an investment property at 1804 Chestnut Street in Philadelphia. The Panama property is also encumbered with a second mortgage from Countrywide in the amount of \$200,000.00 which was obtained in January of 2006. The monthly payment on the second mortgage is \$1,007.00. According to Scandura, proceeds from the second mortgage were used to renovate other investment properties.

Scandura also has a blanket mortgage which covers her investment properties on Chestnut Street, Eighth Street and Tasker Street. That mortgage has an unpaid balance of \$1,540,000.00 and a monthly mortgage payment of \$11,090.00.

As to income and expenses relating to the properties, the hearing examiner determined that, as to the Panama property, Scandura lives on the first and second floors and the third floor is rented for \$1,500.00 per month. At the time of the hearing, the Panama property was listed for sale at \$1.27 million, down from its original list price of \$1.5 million.

In combination with her other investment properties, Scandura has total monthly mortgage payments of \$17,370.00. The various properties produce a total of \$14,200.00 in monthly rental income. Thus, Scandura has a cash deficiency of \$3,170.00 per month, without taking into account any other expenses related to the rental properties. Scandura also has credit card and other unsecured debt in the amount of \$154,000.00.

Scandura's primary source of income is derived from the field of architecture and architecture landscape. In January of 2002, Scandura initiated Scan Design, an architectural and interior design business. In June of 2002, Scandura initiated Float, a companion business in furniture design and manufacturing. For the period of January 1, 2008 through December 29, 2008, Scan Design generated a net business income of \$16,427.54 after a twenty-five percent tax deduction. This amounted to a monthly income of \$1,032.00. For the same period, Float had a net business income of \$24,797.33, after a twenty-five percent tax deduction. This amounted to a monthly income of \$1,558.00. In a letter of circumstance dated June 27, 2008, Scandura stated "In retrospect I understand the amount of time it took to get a manufacturing business off the ground and underestimated the cost/benefit of an architecture business." (S.R. at 63.)

As to her businesses, Scandura stated that she executed a contract in March of 2008 to design a custom line of furniture for guaranteed royalties of \$270,000.00 in 2008, \$150,000.00 in 2009 and \$150,000.00 in 2010. The contract, however, collapsed by July of 2008. Additionally, a contract to design furniture for a hotel chain fell through and two architectural projects failed to materialize.

According to Scandura's tax return for the year 2005, her annual gross income was a loss of \$65,731.00. For the 2006 tax year, Scandura's annual gross income was a \$110,579.00 loss. For the 2007 tax year, Scandura's annual gross income was a \$136,237.00 loss.

Based on the above determinations, the hearing examiner concluded that Scandura was not suffering financial hardship due to circumstances beyond her control. The hearing examiner found that Scandura had overextended herself, had aggravated her situation by mortgaging her Panama house in order to renovate investment properties and that Scandura's monthly expenses exceed her average monthly net effective income. Moreover, the hearing examiner concluded there was no reasonable prospect that Scandura could resume the full mortgage payment within twenty-four months from the date of the mortgage delinquency.

On appeal, Scandura argues that the hearing examiner erred in determining that her hardship and mortgage delinquency were not the result of circumstances beyond her control. We initially note that under Section 404c(a)(4) of the Act, 35 P.S. § 1680.404c(a)(4), no assistance may be made to a mortgagor unless it is established that the mortgagor is "suffering financial hardship due to circumstances beyond the mortgagor's control, which render the mortgagor unable to correct the delinquency or delinquencies within a reasonable time and make full mortgage payments." In determining whether the mortgagor's financial hardship is due to circumstances beyond the mortgagor's control, Section 404c(a)(10) of the Act, 35 P.S. § 1680.404c(a)(10), provides that consideration may be made of the mortgagor's employment record, credit history and current income.

Here, Scandura maintains that it was the economy and cancelled business contracts, events she maintains were out of her control that led to her financial hardship. As noted by the hearing officer, Scandura in March of 2005, refinanced the mortgage on her Panama property home, which, at that time, had a balance of \$495,000.00. Proceeds from the new mortgage were used to rehabilitate investment properties. A second mortgage in the amount of \$200,000.00, obtained in January of 2006, was also used to renovate an investment property. In Valentine v. Pennsylvania Housing Finance Agency, 511 A.2d 915 (Pa. Cmwlth. 1986), the applicant obtained a second mortgage on his home in order to finance a business. This court observed that the applicant voluntarily put his house at risk in order to obtain capital for his business and concluded that the applicant's need for mortgage assistance was not the result of circumstances beyond his control. Here, as in Valentine, Scandura voluntarily put her house at risk when she obtained mortgages on it in order to renovate investment properties. A homeowner's voluntary decision, such as refinancing in this case, which results in financial hardship, does not constitute circumstances beyond a homeowner's control. Cullins v. Pennsylvania Housing Finance Agency, 623 A.2d 951 (Pa. Cmwlth. 1993).

Scandura maintains that her situation is similar to the facts in Coyne v. Pennsylvania Housing Finance Agency, 826 A.2d 925 (Pa. Cmwlth. 2003). In Coyne, the hearing examiner determined that the petitioner was not suffering financial circumstances beyond her control based on the sole reason that the petitioner had no taxable income when the mortgage originated. This court determined that such a fact was irrelevant to

the statutory standard. Although self-employed at the time she obtained the loan, this court stated that the bank felt that the petitioner, who was highly educated, could assume the debt, or else it would not have extended her the loan. We then remanded to the hearing examiner to make specific findings as to whether her financial hardship was due to circumstances beyond her control.

Here, Scandura argues that like the petitioner in Coyne, she is highly educated and self-employed with cyclical earnings and that Countrywide would not have extended her the mortgage unless it knew she could repay it. Unlike Coyne, however, the hearing examiner in this case did not deny Scandura mortgage assistance based on the finding that Scandura was not employed at the time she obtained the mortgage from Countrywide. The hearing examiner here, determined that Scandura's financial hardship was due to financial overextension that Scandura voluntarily took out two mortgages on her home in order to renovate investment properties and that from at least 2005 through 2007, Scandura's total monthly housing expenses alone, exceed her average monthly net income.

Next, Scandura argues that the hearing examiner erred in determining that she did not have the means to resume full mortgage payments within twenty-four months from the date of delinquency. To qualify for assistance under the Act, an applicant must also show in accordance with Section 404c(a)(5), 35 P.S. § 1680.404c(a)(5), "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 ....”

As determined by the hearing examiner, Scandura did not generate any profit from her business enterprises for the years 2005, 2006 and 2007. The investment properties and Scandura’s home generated insufficient income to cover the monthly mortgage payments. Additionally, Scandura had additional housing expenses and personal living expenses totaling \$8,867.00. “The homeowner has been generating insufficient income to support this level of mortgage expense during the past two years and remains in that same situation.” (Hearing examiner’s decision at p. 7.)

Scandura, nonetheless, claims in her brief that since the hearing examiner’s decision, she has sold one of her investment properties, has settled two of her credit card accounts and is also in negotiations to further reduce her debt, thereby reducing her monthly payment. A hearing examiner, however, is not required to include the possibility of future income in the calculation of present monthly income. Harman v. Housing Finance Agency, 529 A.2d 1153 (Pa. Cmwlth. 1987). Similarly, in this case, the hearing examiner was not required to consider that subsequent to the hearing, there would be a possibility that Scandura’s monthly debt would decrease. As stated in Koch v. Pennsylvania Housing Finance Agency, 505 A.2d 649, 651 (Pa. Cmwlth. 1986), it was not a “disregard of evidence on the part of the hearing examiner to have discounted the Petitioner’s assurances that he would do in the future what he had failed to do in the past.”

In accordance with the above, the decision of the Agency is affirmed.

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JIM FLAHERTY, Senior Judge



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**ORDER**

Now, February 16, 2010, the decision of the Pennsylvania Housing Finance Agency, in the above-captioned matter, is affirmed.

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JIM FLAHERTY, Senior Judge