

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWG Docket No. 09-0132
)	
John Duckworth,)	
)	
Petitioner)	Decision

Pursuant to a Hearing Notice issued on October 27, 2009, I held a hearing by telephone preceded by a teleconference, on November 17, 2009, at 11 AM Eastern Time, in consideration of a Petition challenging the existence of a debt that Respondent, USDA, Rural Development alleges Petitioner incurred under a Single Family Housing Loan Guarantee given to secure a home mortgage, which has resulted in the garnishment of Petitioner’s wages for nonpayment. Petitioner did not participate in either the hearing or the teleconference. Respondent participated through its representatives, Gene Elkin and John Weaver, Legal Liaisons, and Mary Kimball, Accountant for the New Initiatives Branch, USDA Rural Development.

In addition to his noncompliance with my order of October 27, 2009 to be present at this hearing by telephone, Petitioner did not provide my secretary, Diane Green with a telephone number where he could be reached on the day of the scheduled hearing as the Order instructed. Furthermore, Petitioner also failed to comply with a prior Prehearing

Order, issued on June 17, 2009, that required him to file, by August 13, 2009, lists of exhibits and witnesses, and a narrative describing why he cannot pay the alleged debt and indicating what portion of the alleged debt he is able to pay through wage garnishment.

Before the hearing commenced, Ms. Green advised me that she called his listed home telephone and spoke to Petitioner's wife who stated Petitioner was at work and had not received notice of this hearing or any other Orders I have issued. During the teleconference Ms. Green and the Hearing Clerk, Leslie E. Whitfield, reviewed their efforts to make Petitioner aware of this scheduled hearing. Mr. Whitfield stated that the official records his office maintains show that the Hearing Notice was sent by regular mail on October 27, 2009, to Petitioner, John Duckworth, [REDACTED], Benton, Arkansas 72019. The mailed Notice of Hearing was not returned by the U.S. Post Office and was presumably delivered. Ms. Green stated that she had telephoned Petitioner at least three times and spoke on each occasion to Petitioner's wife. Each time Mrs. Duckworth was requested to instruct her husband to call our office to set a time for a teleconference and hearing. Mr. Duckworth never did. Prior to the November 17, 2009 hearing, Ms. Green again called the only phone number in our possession and again spoke to Mrs. Duckworth who stated her husband was at work, and that they had never received notice of the hearing because it was probably sent to the wrong address.

Under 31 C.F.R. § 285.11 (f)(2), a hearing on a Petition challenging wage garnishment may be at the agency's option, either oral or written. An oral hearing may be conducted by telephone conference and is only required when the issues in dispute cannot be resolved by review of the documentary evidence 31 C.F.R. § 285.11 (f)(3). An oral hearing was scheduled to commence, on November 17, 2009, to decide petitioner's

challenge to the wage garnishment so that I might hear his concerns. In that Petitioner never advised the Hearing Clerk, the Respondent, or this office that he had moved, that he could only be personally contacted on a different telephone number which he failed to provide, and that all mail sent to his only listed address was never returned as undeliverable by the U. S. Post Office, I proceeded with the scheduled hearing without his presence, and took evidence on the existence of the debt that his Petition challenged.

Ms. Kimball testified for Respondent, and was duly sworn. Respondent proved the existence of the debt owed by Petitioner John W. Duckworth, to Respondent for its payment of a loss sustained by Country Wide Home Loans, Inc., Loan number 065170739, on a \$90,00.00 home mortgage loan the bank had made to Petitioner, on August 13, 2004, for property located at 607 Bryant Meadow, Bryant, AR 72022. There were foreclosure proceedings and the property was resold. The present amount owed on the debt to Respondent is \$5,857.79 plus collection fees owed to the United States Treasury Department which, added together, currently total \$7,497.97. Inasmuch as Petitioner is presently employed there is no evidence that the present collection of any part of the debt would cause Petitioner undue, financial hardship within the meaning and intent of the provisions of 31 C.F.R. § 285.11. Therefore the Petition is dismissed and the proceedings to garnish Petitioner's wages may be resumed provided the amount of wages garnished does not exceed 15% of his disposable income.

Ms. Kimball has advised, however, that if Mr. Duckworth telephones the private agency engaged by Treasury to pursue the debt's collection, he might be able to settle the

debt at a lower amount with lower payments. He is advised to therefore immediately call Pioneer Credit Recovery, Inc. at 1-877-907-1820.

Dated: November 18, 2009

Victor W. Palmer
Administrative Law Judge