

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0260

In re: ALLEN McDONALD,

Petitioner

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the request of Allen McDonald (“Petitioner”) for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development Agency (“Respondent”; “USDA-RD”); and if established, the propriety of imposing administrative wage garnishment. On February 24, 2012, Petitioner requested a hearing before the Office of Administrative Law Judges (“OALJ”).

By Order issued March 15, 2012, a hearing was scheduled to commence on April 12, 2012, and the parties were directed to provide information and documentation to the Hearing Clerk for the Office of Administrative Law Judges for the United States Department of Agriculture (“Hearing Clerk”). Respondent filed a Narrative, together with supporting documentation (“RX-1 through RX-9”).

The hearing commenced as scheduled, at which time Petitioner represented himself and Michelle Tanner of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri, represented Respondent.

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

FINDINGS OF FACT

1. On September 21, 2007, the Petitioner received a home mortgage loan in the amount of \$31,414.00 from lender JP Morgan Chase Bank (“Lender”) for the purchase of real property located in Attica, Indiana, evidenced by Promissory Note. RX-2.
2. Before executing the promissory note for the loan, on August 9, 2007, Petitioner requested a Single Family Housing Loan Guarantee from the USDA-RD, which was granted. RX-1.
3. By executing the guarantee request, Petitioner certified that he would reimburse USDA RD for the amount of any loss claim on the loan paid to the Lender or its assigns. RX-1.
4. The loan fell into default and Petitioner abandoned the house to the Lender, which instituted foreclosure proceedings. RX-3.
5. At foreclosure sale held on November 10, 2009, the Lender’s assignee Homesales Inc. acquired the property for a bid of \$38,615.91. RX-3.
6. The Lender listed the property for sale and sold the property to a third party on February 24, 2010 for \$10,000.00. RX 4; RX-5.
7. At the time of the sale, the amount due on Petitioner’s loan was \$48,812.25, comprised of principal, interest, fees, and costs related to the foreclosure and sale. RX-8.
8. USDA-RD paid JP Morgan Chase \$28,197.82 as a loss, leaving a balance on Petitioner’s account of \$28,197.82, which was referred to the U.S. Department of Treasury (“Treasury”) for collection on May 16, 2011. RX-7; RX-9.
9. Petitioner was advised of intent to garnish his wages to satisfy the indebtedness, and wages were garnished.
10. Petitioner’s request for a hearing was not timely.

11. After application of amounts collected through wage garnishment, Petitioner's debt now stands at \$27,344.94.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. Respondent USDA-RD has established the existence of a valid debt from Petitioner to USDA-RD.
3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.
4. Upon consideration of all of the testimonial and documentary evidence, I find that wage garnishment would constitute a hardship¹ to Petitioner.
5. Because the debt is valid, I find it appropriate that all past amounts collected through garnishment should remain debited to Petitioner's account at Treasury.
6. USDA-RD/Treasury may NOT administratively garnish Petitioner's wages.
7. Petitioner is advised that only Treasury has authority to compromise the amount of the debt, and that he may be able to negotiate settlement of the debt with the representatives of Treasury.
8. Petitioner is further advised that such an agreement may lower anticipated fees for collecting the debt.
9. The toll free number for Treasury's agent is **1-888-826-3127**.
10. Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner, including income tax refunds.

¹ At the oral hearing, I had not had sufficient opportunity to review the financial information relative to Petitioner's disposable income, and had thought that he could sustain a small percentage of garnishment. A closer review of the financial evidence leads me to conclude that garnishment would constitute a hardship.

11. Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

ORDER

1. Administrative wage garnishment would constitute a hardship and may NOT be undertaken.
2. Treasury may continue to collect the debt through offset of any funds due to Petitioner from the United States.
3. Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf at Treasury, notice of any change in his address, phone numbers, or other means of contact.

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

So Ordered this 13th day of April, 2012 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge