

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 10-0003
)
Stanley Maurice Floyd,)
)
Petitioner)

Final Decision and Order

This matter is before me upon the request of the Petitioner, Stanley Floyd, for a hearing in response to efforts of Respondent to institute a federal administrative wage garnishment against him. On October 9, 2009, I issued a Pre-hearing Order requiring the parties to exchange information concerning the amount of the debt.

I conducted a telephone hearing at the scheduled time on December 3, 2009. USDA Rural Development Agency (RD) was represented by Gene Elkin, Esq. and Mary Kimball testified on behalf of the RD agency. Tom Weaver was present from RD but did not testify.

Petitioner was self represented.

The witnesses were sworn in. RD had filed a copy of a Narrative along with exhibits RX-1 through RX-5 on November 6, 2009 with the OALJ Hearing Clerk and certified that it mailed a copy of the same to Petitioner.

Petitioner submitted documents or exhibits (including a sworn statement of current income and expenses (8) pages), a one page hand-written narrative, his pre-hearing request documentation included a two page hand-written narrative dated 7/14/08, a pay stub for 9/13/09, a Consumer Debtor Financial Statement dated 9/21/09 (4) pages, a Consumer Debtor Financial Statement dated 1/30/09 (4) pages. Ms. Kimball acknowledged that RD had the Petitioner's submissions

prior to the Hearing. After the hearing, RD forwarded additional exhibit RX-6 pages,1 thru 6, RD-7 and RX-8 dated 3/16/10 and a supplementary Narrative (#2). The additional exhibits were in response to clarifying statements in the oral testimony relating to the initial RD narrative.

On March 15, 2010, Mr. Floyd revised and clarified his monthly expenses in a follow up teleconference hearing with Mary Kimball of RD and myself. Both parties agreed that they remained under oath.

Petitioner owes \$9,977.79 on the USDA RD loan as of March 18, 2010, and in addition, potential fees of \$2,793.78 due the US Treasury pursuant to the terms of the Promissory Note.

Findings of Fact

1. On July 10, 2003, Petitioner Stanley Maurice Floyd obtained a USDA Rural Development home mortgage loan for property located at ### Barron Park York, SC 297##.¹ Petitioner signed a promissory note for \$69,300 and a Rural Development Loan Guarantee. RX-1@ p. 1.

2. On May 1, 2005, Petitioner defaulted on the note and was sent a Notice of Acceleration and Demand for Payment (Default) on the Promissory Note. Narrative and Ms. Kimball=s testimony. At the time of the Default Notice, the balance due on the note was \$67,601.52 plus unpaid interest. RX-2 @ p. 6 of 7, RX-3 @ p. 1 of 3.

3. The total debt attributed to Petitioner at the time of the foreclosure was \$73,506.36 which included the additional interest and protective advances. RX-2 @ p. 6 of 7, RX-3 @ p. 1 of 3.

4. The lender (Wells Fargo Home Mortgages) acquired the property at the foreclosure

¹Complete address maintained in USDA records.

sale on May 1, 2006 for a bid price of \$61,200. RX-2 @ p. 3 of 7.

5. The lender listed the property for sale on July 24, 2006 for \$69,900 and after the property did not sell, re-listed the property on November 20, 2006 for \$62,900. Narrative, RX-2 @ p. 3 of 7.

6. A RHS appraisal dated November 30, 2006 valued the property as \$63,000.00. RX-2 @ p. 4 of 7.

7. The property was sold to a new purchaser for \$62,900 on January 30, 2007. Narrative # 2, RX-6 @ p. 1 of 6, 2 of 6.

The net proceeds of the sale after foreclosure costs, protective advances, and accrued interest was \$19,276.46. RX-3 @ p. 1 of 3.

8 After the final sale, there was an additional recoveries (treasury offset) of \$4,243.00 and subsequent garnishments totaling \$3,716.61 (\$3,103.01 + \$167.26 + \$446.34) which brought the Petitioner=s debt down to \$11,316.85.

9. During the March 15th teleconference, Ms. Kimball advised that the new balance has been further reduced to \$9,977.79 by additional recoveries. RX-8 (3/16/10), Narrative # 2.

10. The potential fees due U.S. Treasury pursuant to the Loan Guarantee Agreement are \$2,793.78. Ms. Kimball testimony, RX-8.

10. There was oral testimony from Petitioner that he has been continuously employed by his current employer for 5 years, however his average weekly hours of employment have been involuntarily reduced by his employer from 40 down to as low as 20 hours per week and he states that the employment will cease on/about May 2010. Petitioner's gross hourly wages are currently \$14.79.

11. The Petitioner raised issues of financial hardship resulting from the garnishment

process. Petitioner's employer provided a gross wages only statement for the 4th quarter of 2009.

RX-6. I used an on-line Federal Tax estimator and a South Carolina income tax estimator to approximate Federal and State payroll deductions for the purpose of the Financial Hardship Calculation program. Petitioner's Expenses provided in the follow-up teleconference were evaluated using the Financial Hardship Calculation Program. The result is that RD is entitled to garnish \$192.13 per month (11.8%) of Petitioner's wages at this time. The Financial Hardship Calculation Worksheet, the compilation of Mr. Floyd's recent oral monthly expense statement and both on-line estimator forms are attached² to this Order.

Petitioner's garnishment is temporarily reduced from 15% to 11.8% for one year after which time, the calculation may be reviewed for the purposes of calculating an appropriate garnishment under the regulations 31 C.F.R.' 285.11(j).

12. Stanley Maurice Floyd is liable for the debt under the terms of the Promissory Note.

Conclusions of Law

1. Petitioner Stanley Maurice Floyd is indebted to USDA's Rural Development program in the amount of \$9,977.79.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$2,793.78.

3. All procedural requirements for administrative wage garnishment set forth in 31 C.F.R. ' 285.11 have been met.

4. Petitioner is under a duty to inform USDA's Rural Development of his current address, employment circumstances, and living expenses.

² The Financial Hardship Calculation is not posted online.

5. Following compliance with 31 C.F.R.' 285.11(j), the USDA Rural Development Agency (RD) is entitled to administratively garnish the wages of the Petitioner.

Order

For the foregoing reasons, provided the requirements of 31 C.F.R. ' 288.11(j) have been met, the wages of the Petitioner, Stanley Maurice Floyd, shall be subject to administrative wage garnishment in the amount of 11.8% of his wages.

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

JAMES P. HURT
Hearing Official

March 18, 2010