

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 10-0077
)
Michael Shonk,)
)
Petitioner)

Final Decision and Order

This matter is before me upon the request of the Petitioner, Michael Shonk for a hearing in response to efforts of Respondent to institute a federal administrative wage garnishment against him. On January 21, 2010, 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 April 12, 2010. USDA Rural Development Agency (RD) was represented by Gene Elkin, Esq., and Mary Kimball who testified on behalf of the RD agency.

Petitioner failed to provide a phone number at which he could be contacted and RD had no current phone number in their file.

I proceeded under the “paper hearing” rules of 31 CFR ¶ 285.11(f)(3)(iii).

Petitioner was not present but had submitted under oath a ten-page Financial Statement, dated February 21, 2010, which I now label as PX-1.

The witnesses were sworn in. RD had filed a copy of a Narrative along with exhibits RX-1 through RX-5 on February 12, 2010 with the OALJ Hearing Clerk and certified that it mailed a copy of the same to Petitioner.

Petitioner’s financial forms indicated that he had been employed for approximately 7

months (through today) as a Wal-Mart sales clerk. RD did not have any documentation to dispute Petitioner's contention.

Petitioner owes 31,877.80 on the USDA RD loan as of today, and in addition, potential fees of \$8,925.78 due the US Treasury pursuant to the terms of the Promissory Note.

Findings of Fact

1. On March 28, 2006, Petitioner and his wife Debra Shonk obtained a guaranteed USDA Rural Development home mortgage loan for property located at 12** South Mars***, Paris, IL 619**. ¹ Petitioner was co-signor to a promissory note for \$54,877.43. Narrative, RX-2 @ p. 2 of 7.

2. On October 1, 2006, Petitioner defaulted on the note and was sent a Notice of Acceleration and Demand for Payment (Default) on the Promissory Note. Narrative. At the time of the Default Notice, the balance due on the note was \$54,596.40. Narrative, (as orally modified) RX-2 @ p. 6 of 7.

3. The property was acquired at a foreclosure sale on October 22, 2007 by the lender for \$46,750.00. RX-2 @ p. 3 of 7.

4. The residence was appraised on February 18, 2008 for \$40,000. It was reappraised by a real estate broker on March 3, 2008 for \$33,000. It was listed for sale on April 21, 2008 and was sold on April 30, 2008 for \$40,000. RX-2 @ ps. 3,4 of 8.

5. After the foreclosure sale, Treasury recovered additional amounts of \$948.11 and \$173.09 from the Petitioner - thus reducing the amount due from Petitioner to \$31,877.80 Narrative, Ms. Kimball's testimony and RX-3, RX-5.

¹Complete address maintained in USDA records.

5. The potential fees due U.S. Treasury pursuant to the Loan Guarantee Agreement are \$8,925.70. Orally corrected Narrative, RX-5 (as corrected).

6. Michael Shonk is severally liable as a co-signor for the debt under the terms of the Promissory Note. RX-2 @ p. 2 of 2.

7. In reliance upon Petitioner's sworn financial statements, RD stated that it had no objection to the temporary suspension of the administrative wage garnishment procedures.

Conclusions of Law

1. Petitioner Michael Shonk is indebted to USDA's Rural Development program in the amount of \$31,877.80.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$8,925.78.

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.

5. Administrative wage garnishment proceedings are temporarily suspended for six months, after which RD may re-evaluate Petitioner's financial position.

Order

The requirements of 31 C.F.R. ¶ 288.11(i) & (j) have been met. Administratively wage garnishment is suspended for six months.

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

JAMES P. HURT
Hearing Official

April 12, 2010