

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 10-0142
)
James Calmes,)
)
Petitioner)

Final Decision and Order

This matter is before me upon the request of the Petitioner, James Calmes, for a hearing in response to efforts of Respondent to institute a federal administrative wage garnishment against him. On March 18, 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 June 1, 2010. USDA Rural Development Agency (RD) was represented by Mary Kimball who testified on behalf of the RD agency.

Petitioner was present and 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 May 5, 2010 with the OALJ Hearing Clerk and certified that it mailed a copy of the same to Petitioner. Mr. Calmes stated that he received RD's Exhibits and witness list. Following the hearing, RD filed RX-6 and a revision to RX-3.

On May 14, 2010, Petitioner submitted his typed Narrative along with exhibits PX-1 and PX-2 (financial information) under oath. Since Mr. Calmes was married, I requested his wife's part-time income information for the Financial Hardship calculation.

Petitioner owes \$9,627.93 on the USDA RD loan as of today, and in addition, potential

fees of \$2,695.82 due the US Treasury pursuant to the terms of the Promissory Note.

Findings of Fact

1. On January 8, 2004, Petitioner James Calmes (individually) obtained a USDA FHA home mortgage loan in the amount of \$55,000 for property located at #1 Landing Road, Columbus, MS 397**.¹ The borrower also signed a Loan Guarantee in favor of RD. RX-1 @ p. 1 of 2.

2. Borrower become delinquent on his payments and was defaulted on May 1, 2007. Narrative.

3. RD obtained a “As Is” appraisal on June 27, 2008 with an opinion that the value of the property was \$56,000. RX-2. RD also obtained a brokers professional opinion (BPO) that the “As Is” value was \$49,000.00 on June 30, 2008. RX-2 @ p. 3 of 8.

4. The property was listed for \$56,000 on August 8, 2008 and relisted on November 8, 2008 for \$50,600. RX-2 @ p. 4 of 8.

5. The property was sold for \$47,600 on November 26, 2008. Narrative, RX-2 @ p. 4 of 8.

6. The net amount of sale proceeds received by RD was \$40,356.20. RX-2 @ p. 6 of 8. At the time of the sale, the balance due on the note with interest was \$56,157.83. Narrative, RX-2 @ p. 6 of 8, RX-3 @ p. 1 of 2.

7. After the sale, Treasury recovered an additional \$8,092.23, but added a \$1,535.70 “charge back” - thus reducing the amount due from Petitioner to \$9,627.93. Narrative, RX-3 @ p. 2 of 3 (revised).

8. The potential fees due U.S. Treasury pursuant to the Loan Guarantee Agreement are \$2,695.82. Narrative, RX-3 @ p. 2 of 3 (revised).

9. Petitioner stated that he has been gainfully employed in an equipment rental company

¹Complete address maintained in USDA records.

for a long term, but he raised issues of financial hardship.

10. Petitioner provided a financial schedule of expenses and stated his gross weekly income along with a recent pay stub. PX-1, PX-2. He also provided statements of his wife's part-time income for four recent pay periods. I calculated the family unit income with and without his overtime pay. I took into consideration the below average expenditures for food, housing and transportation expenses.

11. Using the Financial Hardship Calculation program and data from Petitioner's sworn testimony and financial statement, I made a calculation of the appropriate wage garnishment. The calculations are enclosed.²

Conclusions of Law

1. Petitioner James Calmes is indebted to USDA's Rural Development program in the amount of \$9,627.93.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$2,695.82.

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. RD may administratively garnish Petitioner's wages at this time in the amount of 8% of his monthly disposable income not including overtime or bonus pay.

Order

1. The requirements of 31 C.F.R. ¶ 288.11(i) & (j) have been met.

2. RD may Administratively Garnishment wages against this debtor in the amount of

² The Financial Hardship Calculation is not posted on the OALJ website.

eight (8) % of his monthly disposable income.

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

JAMES P. HURT

Hearing Official

June 18, 2010