

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 10-0144
)
Kyle Smith,)
)
Petitioner)

Final Decision and Order

This matter is before me upon the request of the Petitioner, Kyle Smith, 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 2, 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. Smith stated that he received RD's Exhibits and witness list.

Following the hearing, Petitioner submitted a four page Financial Statement which I now label as PX-1 and two bi-weekly wage statements from his employer. Mr. Smith states that his wife is not employed. Mr. Smith provided the address of his prior spouse and co-debtor on this loan.

Petitioner owes \$15,244.83 on the USDA RD loan as of today, and in addition, potential

fees of \$4,268.55 due the US Treasury pursuant to the terms of the Promissory Note.

Findings of Fact

1. On December 6, 2004, Petitioner Kyle Smith and Jodi Smith obtained a USDA FHA home mortgage loan in the amount of \$93,000 for property located at 6## Idaho Street, Gooding, ID 833**.¹ The borrowers also signed a Loan Guarantee in favor of RD. RX-1 @ p. 1 of 2.

2. Borrowers become delinquent on their payments and were defaulted on were September 1, 2007. Narrative.

3. RD obtained a “As Is” appraisal on August 13, 2008 with an opinion that the value of the property was \$88,000. RX-2 @ p. 3 of 8. RD also obtained a brokers professional opinion (BPO) that the “As Is” value was \$75,000 on August 8, 2008. RX-2 @ p. 3 of 8.

4. The property was listed for \$85,900 on August 22, 2008 and relisted on November 20, 2008 for \$85,575. RX-2 @ p. 4 of 8.

5. The property was sold for \$87,500 on December 3, 2008. Narrative, RX-2 @ p. 4 of 8.

6. The net amount of sale proceeds received by RD was \$78,261.09. RX-2 @ p. 6 of 8. At the time of the sale, the balance due on the note with interest was \$98,016.92. Narrative, RX-2 @ p. 6 of 8.

7. After the sale, Treasury recovered an additional \$4,511.00 - thus reducing the amount due from Petitioner to \$15,244.83. Narrative, RX-4.

8. The potential fees due U.S. Treasury pursuant to the Loan Guarantee Agreement are \$4,268.55. Narrative, RX-5.

9. Petitioner stated that he has been gainfully employed in an truck driver, but he raised issues of financial hardship.

10. Petitioner provided a financial schedule of expenses and two bi-weekly pay stubs PX-1. I took into consideration his present credit card debt, his past lawyer fees and

¹Complete address maintained in USDA records.

washer/dryer payments. I allowed a twelve month payoff of his credit card debt, but stretched out his washer/dryer appliance payments over 36 months and his past lawyer fees over 36 months.

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 Kyle Smith is indebted to USDA's Rural Development program in the amount of \$15,244.83.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$4,268.55.

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 not administratively garnish Petitioner's wages at this time.

6. After one year, RD may reassess Petitioner's financial hardship criteria.

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

Order

1. The requirements of 31 C.F.R. ¶ 288.11(i) & (j) have been met.
2. The Administrative Garnishment against this debtor is suspended at this time.
3. After one year, RD may reassess Debtor's financial position and modify the garnishment percentage as circumstances dictate.
4. Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's office.

JAMES P. HURT

Hearing Official

June 22, 2010