

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 10-0441
)
Melissa Olguin,)
)
Petitioner)

Dismissal of Petition for Oral Hearing

This matter is before me upon the request of the Petitioner, Melissa Olguin, k/n/a/ Melissa Geiger for a hearing in response to efforts of Respondent to institute a federal administrative wage garnishment against her. On October 28, 2010, I issued a Pre-hearing Order requiring the parties to exchange information concerning the amount of the debt.

RD had previously submitted its Narrative and Exhibits RX-1 through RX -5 pursuant to my Pre-Hearing order.

Ms. Olguin provided a marital “Stipulation Exhibit” between herself and her ex-husband which I now label as PX-1 (10 pages). On January 31, 2011 at the re-scheduled time, both parties were available for the conference call. The parties were sworn.

I reviewed the documentation submitted by RD and noted that the underlying loan document was missing from the exhibits. I inquired if RD needed more time to locate the missing document(s). Ms. Mary Kimball, representing RD, stated that the signed promissory note was missing and that there was no reasonable expectation that it could be found.

Under 31 C.F.R. 285.11(f) (8)(i) *The agency will have the burden of going forward to prove the existence [] of the debt.* Consequently, the agency has failed to meet its burden and the debt must be discharged and cancelled.

Conclusions of Law

1. Petitioner, Melissa Olguin, is not indebted to USDA's Rural Development program.
2. In addition, Petitioner is not indebted for potential fees to the US Treasury.
3. All procedural requirements for administrative wage garnishment set forth in 31 C.F.R. ¶ 285.11 have been met.
4. RD may not administratively garnish Petitioner's wages.

Order

1. The Administrative Wage Garnishment may not proceed against this debtor pursuant to 31 C.F.R. §285.11(f)(8)(i).
2. Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's office.

JAMES P. HURT

Hearing Official

January 31, 2011