

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) **AWG Docket No. 11-0045**
Jason Shope)
)
Petitioner) **Decision and Order**

1. The hearing was held on February 1, 2011, as scheduled. Jason Shope, the Petitioner (“Petitioner Shope”) failed to appear. [Petitioner Shope could not be reached at the telephone number listed on his hearing request, and he provided no other phone number.]
2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and was represented by Ms. Mary E. Kimball. The address for USDA Rural Development for this case is

Mary E. Kimball, Branch Accountant
USDA / RD New Program Initiatives Branch
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3. I encourage **Petitioner Shope and the collection agency** to work together to **establish a repayment schedule** rather than immediately proceeding with garnishment, even though this Decision authorizes garnishment, up to 15% of Petitioner Shope’s disposable pay. Petitioner Shope, obviously, will have to make himself available to the collection agency if he wants to negotiate. *See* paragraphs 10 and 11.
4. This is Petitioner Shope’s case (he filed the Petition), and in addition to failing to be available for the hearing, Petitioner Shope failed to file with the Hearing Clerk any information. Petitioner Shope’s deadline for that was January 24, 2011.

Summary of the Facts Presented

5. Petitioner Shope owes to USDA Rural Development a balance of **\$38,227.56** (as of 11/17/2010), in repayment of a United States Department of Agriculture / Rural Housing Service *Guarantee* (see RX-1, esp. p. 2) for a loan made in 2005, the balance of which is now unsecured (“the debt”). Petitioner Shope borrowed to buy a home in Ohio. See USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed January 10, 2011), which are admitted into evidence, together with the testimony of Mary Kimball.

6. This *Guarantee* establishes an **independent** obligation of Petitioner Shope, “I certify and acknowledge that if the Agency pays a loss claim on the requested loan to the lender, I will reimburse the Agency for that amount. If I do not, the Agency will use all remedies available to it, including those under the Debt Collection Improvement Act, to recover on the Federal debt directly from me. The Agency’s right to collect is independent of the lender’s right to collect under the guaranteed note and will not be affected by any release by the lender of my obligation to repay the loan. Any Agency collection under this paragraph will not be shared with the lender.” RX 1, p. 2.

7. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$38,227.56**, would increase the current balance by \$11,468.27, to \$49,695.83. See USDA Rural Development Exhibits, esp. RX 6.

8. The amount Petitioner Shope borrowed from JP Morgan Chase Bank, N.A., was \$70,890.00 in 2005. By the time of the foreclosure sale and subsequent eviction in 2007, that debt had grown to \$82,439.05:

\$ 70,550.13	Unpaid Principal Balance
\$ 10,362.60	Accrued Interest Owed ¹
\$ 1,447.94	Protective Advances
<u>\$ 78.38</u>	Interest on Protective Advances
\$ 82,439.05	Amount Due prior to sale
+ <u>\$ 10,836.47</u>	Lender Expenses to Sell Property
\$ 93,275.52	Debt Charged to Petitioner Shope
- \$ 43,501.88	Credits to Petitioner Shope ²

¹ [12/01/2005 was the due date of the last payment made]

² [includes \$39,000.00 liquidation value; the home sold on 06/11/09 for \$12,000.00.]

So, even after Petitioner Shope was credited with \$39,000.00 for liquidation value of the house, and other credits, Petitioner Shope still owed USDA Rural Development \$49,773.64, which is the amount USDA Rural Development paid the lender:

\$ 93,275.52	Debt Charged to Petitioner Shope
- \$ 43,501.88	Credits to Petitioner Shope
\$ 49,773.64	USDA paid lender on 06/17/08

See USDA Rural Development Narrative, and RX 3.

Petitioner Shope has paid the balance down to **\$38,227.56** as of 11/17/2010 (not including “Potential Treasury fees”). RX 6.

9. Petitioner Shope failed to file a Consumer Debtor Financial Statement or any other financial information or anything in response to my Order dated December 29, 2010; consequently there is no evidence before me regarding Petitioner Shope’s disposable pay or any 31 C.F.R. § 285.11 factors. I must presume that Petitioner Shope’s disposable pay supports garnishment, up to 15% of Petitioner Shope’s disposable pay.

10. Petitioner Shope is responsible and capable of negotiating the repayment of the debt with Treasury’s collection agency.

Discussion

11. I encourage **Petitioner Shope and the collection agency to negotiate promptly** the repayment of the debt. Petitioner Shope, this will require **you** to telephone the collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Shope, you may choose to offer to compromise the debt for an amount you are able to pay, to settle the claim for less.

Findings, Analysis and Conclusions

12. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Shope and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.

13. Petitioner Shope owes the debt described in paragraphs 5, 6 and 7.

14. Garnishment is authorized, up to 15% of Petitioner Shope’s disposable pay. 31 C.F.R. § 285.11.

15. Repayment of the debt may also occur through *offset* of Petitioner Shope's **income tax refunds** or other **Federal monies** payable to the order of Mr. Shope.

Order

16. Until the debt is fully paid, Petitioner Shope shall give notice to USDA Rural Development or those collecting on its behalf, of any changes in his mailing address; delivery address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).

17. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment, up to 15% of Petitioner Shope's disposable pay.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 2nd day of February 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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