

**UNITED STATES DEPARTMENT OF AGRICULTURE**

**BEFORE THE SECRETARY OF AGRICULTURE**

In re: ) AWG Docket No. 10-0303  
 )  
Kenneth Perkins )  
 )  
Petitioner )

**Final Decision and Order**

This matter is before me upon the request of the Petitioner (or “Debtor”), Kenneth Perkins, for a hearing in response to efforts of Respondent to institute a federal administrative wage garnishment against him. On February 16, 2011, I issued a Pre-hearing Order requiring the parties to exchange information concerning the amount of the debt. Mr. Perkins filed his Petition on/about May 27, 2010, but the file did not clearly reflect that he was mailed the Pre-Hearing Order and thus it was re-issued. Also, Mr. Perkins only appealed the garnishment as to Account # 0016837224 and this order will **only** apply to that Account.

I conducted a telephone hearing at the revised scheduled time on March 28, 2011. USDA Rural Development Agency (RD) was represented by Mary Kimball who testified on behalf of the RD agency. Ms. Marcia Moore of RD was attending but did not testify.

Mr. Perkins was present and was self represented. Mr. Perkins advised that he could not read or write and he was accompanied by his mother, Geneva Perkins who was literate.

The witnesses were sworn in. RD had filed a copy of a Narrative along with exhibits RX-1 through RX-6 on July 26, 2010 with the OALJ Hearing Clerk and certified that it mailed a copy of the same to Petitioner. Prior to the hearing, RD filed exhibits RX-10 and 11 (which I re-number as RX-7 and 8. Mr. Perkins stated that he received RD’s Exhibits and witness list.

Following the hearing, Mr. Perkins filed a bi-weekly pay stub from his employer and a financial statement under oath of his monthly expenses which I now label as PX-1.

Petitioner owes \$10,967.67 on the USDA RD FmHA loan # 16837224 as of today, and in addition, potential fees of \$3,070.95 due the US Treasury pursuant to the terms of the Promissory Note and guarantee. The debt related to FmHA loan # 4515671 has not been determined in this order.

### **Findings of Fact**

1. On November 25, 1997, Petitioner Kenneth Perkins and Abigail (his wife) obtained a USDA FmHA home mortgage loan for property located at 52\*\* KY 1\*\* , Campton, KY 413\*\*. <sup>1</sup> Petitioner was signor to a assumption agreement for \$32,376.81 (Account # 4515671) and at the same time obtained a loan from USDA FmHA for \$11,030.00 (Account # 16837224). RX-1.

2. The Borrowers defaulted on the loans and a foreclosure sale was held on January 13, 2003. RX-7.

3. Prior to the sale, borrowers owed \$10,967.67 as principal and \$3,489.95 as interest on account #16837224. RX-4.

4. The net proceeds received by RD from the foreclosure sale was \$31,850. RX- 4. Of the net monies received from the foreclosure sale, \$3,489.95 was applied to account # 16837224.

5. After the application of a portion of the foreclosure sale proceeds, Mr. Perkins now owes \$10,967.67 on account # 16837224. Narrative, RX-4.

6. The potential fees due U.S. Treasury pursuant to the Loan Agreement on account #16837224 are \$3,070.95. Narrative, RX-5.

7. Mr. Perkins is jointly and severally liable on the debt under the terms of the Promissory Note.

8. Mr. Perkins stated that he has been gainfully employed for more than one year, but he

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<sup>1</sup>Complete address maintained in USDA records.

raised issues of financial hardship.

9. Mr. Perkins provided a financial schedule of expenses under oath and a bi-weekly pay stub from his employer. PX-1.

16. Using the Financial Hardship Calculation program and data from his sworn testimony and financial statement (PX – 1), I made a calculation of the appropriate wage garnishment. The calculations are enclosed.<sup>2</sup>

### Conclusions of Law

1. Petitioner, Kenneth Perkins, is indebted to USDA's Rural Development program in the amount of \$10,967.67 on account # 16837224.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$3,070.95 on account # 16837224.

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 **not** garnish Petitioner's wages.

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

7. These findings are res judicata as to Finding of Facts paragraphs 1 through 16 above but not as to the remaining debt (if any) on account # 4515671.

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<sup>2</sup> 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 wages of Petitioner may **not** be garnished for one year as to account #16837224.
3. After one year, RD may reassess the 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.

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JAMES P. HURT

Hearing Official

March 29, 2011