

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 10-0010
)
Jose Ortiz,)
)
Petitioner)

Decision and Order

This matter is before me upon the request of the Petitioner, Jose Ortiz, for a hearing in response to efforts of Rural Development, Respondent, to institute a federal administrative wage garnishment against him. On October 23, 2009, I issued a Pre-hearing Order requiring the parties to exchange information concerning the amount of the debt. The Hearing date was set to be January 5, 2010.

I commenced the hearing at the appointed date and time with Mary Kimball and John Weaver representing Rural Development. Petitioner was self represented. The witnesses were sworn in.

RD had filed a copy of a Narrative along with exhibits RX-1 through RX-6 on November 24, 2009 with the OALJ Hearing Clerk and certified that it mailed a copy of the same to Petitioner.

Petitioner did not submit any documents or exhibits.

Petitioner owes \$27,656.40 on the USDA RD loan as of January 5, 2010, and in addition, potential fees of \$7,743.49 due to the US Treasury pursuant to the terms of the Promissory Note.

Findings of Fact

1. On March 22, 2006, Petitioner Jose Ortiz obtained a USDA Rural Development home mortgage loan for property located at ### FM #17, West Dickson, TX 775##.¹ Petitioner signed a promissory note for \$72,600.00 and a Rural Development Loan Guarantee. RX-1@ p. 1, 2.

2. On December 1, 2006, Petitioner defaulted on the note and was sent a Notice of Acceleration and Demand for Payment (Default) on the Promissory Note. Narrative and Ms. Kimball's testimony. At the time of the Default Notice, the balance due on the note was \$71,795.95. Narrative, RX-2 @ p.2 of 7.

3. The lender (JP Morgan Chase Bank) acquired the property at the foreclosure sale on December 1, 2006 for a bid price of \$76,512.54. Narrative. RX-2 @ p. 3 of 7.

4. An eviction process upon Petitioner was not complete until October 4, 2007 which delayed recovery of the property.

5. A Broker's appraisal (BPO) of the property "as is" was obtained on October 29, 2007 in the amount of \$38,000.00. RX-2 @ p. 3 of 7.

6. The lender listed the property for sale on November 7, 2007 for \$53,000.00. The property was sold to a new owner on December 31, 2007 for \$53,000.00. Narrative, RX-2 @ p. 4 of 7. The net proceeds of the sale after foreclosure costs, protective advances, and accrued interest was \$42,970.56. RX-2 @ p. 6 of 7.

7. After set-offs, the amount paid to Lender by RD under the Computer Loss Program is \$33,257.40. Narrative, RX-2 @ p. 6 of 7.

¹Complete address maintained in USDA records.

8. Post-foreclosure recoveries as Treasury Offsets in the amount of \$5,601.00 reduced Petitioner debt to \$27,656.40. RX-3.

9. The potential fees due U.S. Treasury pursuant to the Loan Guarantee Agreement are \$7,743.49. Ms. Kimball testimony, RX-6.

10. Petitioner is fully employed and has submitted pay records from his employer covering the period from Sept. 25th through December 25th, 2009.

11. The AWG Garnishment calculation program shows a net monthly disposable income² as [REDACTED] over the last 14 weekly pay periods.

12. Jose Ortiz is liable for the debt under the terms of the Promissory Note.

Conclusions of Law

1. Petitioner Jose Ortiz is indebted to USDA's Rural Development program in the amount of \$27,656.40.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$7,743.49.

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 and employment circumstances.

5. Following compliance with 31 C.F.R. ¶ 285.11(j), the USDA Rural Development Agency (RD) is entitled to administratively garnish the wages of the Petitioner at the maximum rate of 15% of the monthly disposal income calculated

² Monthly Disposable Income is Gross Wages less (Federal taxes, State Taxes, Local/City taxes, FICA, Medicare, Health Insurance)

above.

Order

For the foregoing reasons, provided the requirements of 31 C.F.R. ¶ 288.11(i) and (j) have been met, the wages of the Petitioner, Jose Ortiz, shall be subject to administrative wage garnishment up to 15% of his Monthly Disposable Income.

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

JAMES P. HURT
Hearing Official

January 7, 2010