

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWG Docket No. 10-0026
)	
Jay O. Davis)	
)	
Petitioner)	
)	Decision

Pursuant to a Hearing Notice, I held a hearing in this proceeding by telephone, on January 12, 2010, at 1:00 PM Eastern Time. Petitioner, Jay O. Davis, and Respondent’s representatives, Gene Elkin and Mary E. Kimball, participated and were sworn. Ms. Kimball introduced, identified and authenticated records regularly maintained by USDA, Rural Development that were received as Exhibits RX-1 through RX-6. Petitioner’s Exhibits PX-1 through PX-6 were introduced, identified and authenticated by Mr. Davis and were also duly received. At issue is the nonpayment of a debt owed to USDA, Rural Development on a home mortgage loan on property that Mr. Davis transferred to his former wife by a special warranty deed when they divorced (PX-1 and RX-6, pp.2-4).

The divorce decree that was entered on November 20, 2001 by the District Court for the 109th Judicial District, states the house that was the subject of the mortgage, was awarded to Petitioner’s ex-wife, Robin Annette Davis, “as her sole and separate property, and the husband is divested of all right, title, interest, and claim in and to that property” (PX-1, page 21 of the decree). It further ordered and decreed that:

.... Robin Annette Davis, shall pay ...and indemnify and hold the husband harmless from any failure to discharge.... (t)he balance due, including principal, interest, tax, and insurance escrow, on the promissory note executed by Robin

Annette Davis and Jay Owen Davis in the original principal sum of \$69,450.00, dated July 3, 2000, payable to the United States Department of Agriculture-Rural Housing Service, and secured by deed of trust on the real property awarded in this decree to the wife...

PX-1, page 23 of the decree

Mr. Elkin explained that the Promissory Note that both Mr. Davis and his ex-wife signed on July 3, 2000,(PX-1), obligated both of them to repay whatever outlays USDA, Rural Development was required to make for its losses and expenses arising out of any failure to pay the mortgage loan. Mr. Elkin argued that inasmuch as USDA, Rural Development was neither a party nor participated in any way in the divorce proceeding, Mr. Davis is still subject to the debt under the promissory note he signed that states:

OBLIGATIONS OF PERSONS UNDER THIS NOTE. If more than one person signs this note, each person is fully and personally obligated to keep all of the promises made in this note, including the promise to pay the full amount owed....The Government may enforce its rights under this note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this note....”

RX-1, page 3

Mr. Elkins further argued that such legal recourse as Mr. Davis may have is limited to seeking indemnification from his ex-wife for the amounts that he may be required to pay USDA, Rural Development. He acknowledged that Robin Davis was discharged from her obligation to pay the debt obligations in chapter 7 bankruptcy on August 31, 2007, but does not believe that the discharge relieved Mr. Davis from his obligation to pay the amounts under the promissory note that remain unpaid.

Mr. Davis testified that he was unrepresented in the divorce action, and sincerely believed all of his obligations under the promissory note had ended. Since the divorce, both Mr. Davis and his ex-wife have remarried. He further testified, and I hereby find,

that to make any payments on the debt, or have any part of his wages garnished, at this time, would cause him undue financial hardship.

The evidence received in evidence proved that:

- On July 3, 2000, petitioner signed a promissory note, obligating him to reimburse USDA, Rural Development for any future loss claim, in respect to a mortgage loan in the amount of \$55,500.00 for property located at 906 NW. 13th Street, Andrews, Texas 79714 (RX-1).
- The mortgage loan was defaulted upon and the property was sold in a foreclosure sale, on June 5, 2007, for \$62,000.00. At that time, the amount due to USDA, Rural Development, and another lender, was \$92,219.85. After the sale funds and an insurance refund were applied to the debt, the remaining balance was \$29,556.88.
- Presently, the amount owed to USDA, Rural Development is \$29,556.88 and fees of \$302.19 (RX-5).
- Mr. Davis has remarried. He and his new wife lost a home they owned in Orange, Texas, as well as its contents, due to flood damage caused by Hurricane Ike. They are both 53 years old and have had to start their lives all over.
- Mr. Davis is employed by the Kansa City Southern Railway as a Carman and earns a gross monthly salary of \$ [REDACTED] (Consumer Debtor Financial Statement).
- The Consumer Debtor Financial Statement shows Mr. Davis has monthly expenses of [REDACTED]

USDA, Rural Development has met its burden under 31 C.F.R. §285.11(f)(8) that governs administrative wage garnishment hearings, and has proved the existence and the amount of the debt owed by the Petitioner. On the other hand, Petitioner showed that he would suffer undue financial hardship if any amount of money is garnished from his disposable income at any time during the next eighteen (18) months. During that time, Mr. Davis shall make efforts to contact an attorney to see if he has any recourse under the divorce decree or through his former wife's discharge in bankruptcy. Moreover, he or his attorney shall contact Treasury to discuss a settlement plan to pay the debt.

Under these circumstances, the proceedings to garnish Petitioner's wages are suspended and may not be resumed for eighteen (18) months from the date of this Order.

Dated: January 14, 2010

Victor W. Palmer
Administrative Law Judge