

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 10-0126
)
Brian E. Ward,)
)
Petitioner)

Final Decision and Order

This matter is before me upon the request of the Petitioner, Brian E. Ward, for a hearing in response to efforts of Respondent to institute a federal administrative wage garnishment against him. On March 4, 2010, I issued a Pre-hearing Order requiring the parties to exchange information concerning the amount of the debt.

I conducted a telephone hearing at the scheduled time on April 20, 2010. USDA Rural Development Agency (RD) was represented by Gene Elkin, Esq., and Mary Kimball who testified on behalf of the RD agency.

Petitioner was present and was self represented.

The witnesses were sworn in. RD had filed a copy of a Narrative along with exhibits RX-1 through RX-4 on April 2, 2010 with the OALJ Hearing Clerk and certified that it mailed a copy of the same to Petitioner. Mr. Ward stated that he received RD's Exhibits and witness list. Following the hearing, RD filed RX-5.

Petitioner submitted a financial statement under oath on April 20, 2010.

Petitioner owes \$20,657.79 on the USDA RD loan as of today, and in addition, potential fees of \$5,784.18 due the US Treasury pursuant to the terms of the Promissory Note.

Findings of Fact

1. On May 23, 1986, Petitioner Brian and Tami Ward obtained a USDA FHA home mortgage loan for property located at 4## And***** Road, Vestal, NY, 138**.¹ Petitioner was co-signor to a promissory note for \$54,518.42. RX-1 @ p. 1 of 3.

2. The property was sold in a “short sale” on November 6, 2000 for \$61,500. At the time of the short sale, the balance due on the note was \$72,862.96. Narrative, RX-3.

3. Petitioner stated that at the short sale closing, he heard an RD official state that Petitioner’s remaining debt would be forgiven.

4. As a result of Petitioner’s assertion, RD filed a post-closing letter dated November 28, 2000 (RX-5), which states on line one “. . . there is a balance of \$21,448.76 remaining on your account. . .”

5. Gene Elkin stated that it is standard RD policy to acquiesce to “short sales” which release the RD lien from the legal title when it is in the interest of the agency to do so, but do not forgive the debt against the RD borrower.

6. Given the dichotomy of these two financial positions, I find that Petitioner was under a duty to seek corrections in the RD records, but Petitioner admitted that he had no documentation raising these concerns over the alleged multi-thousand dollar “error.”

7. After the sale, Treasury recovered an additional \$790.97 - thus reducing the amount due from Petitioner to \$20,657.79. Narrative, RX-3, RX-4.

8. The potential fees due U.S. Treasury pursuant to the Loan Guarantee Agreement are \$5,784.18. Narrative, RX-4.

9. Petitioner is jointly and severally liable on the debt under the terms of the Promissory

¹Complete address maintained in USDA records.

Note.

10. Petitioner stated that he has been gainfully employed for a long term, but he raised issues of financial hardship.

11. Using the Financial Hardship Calculation program and data from Petitioner's sworn testimony and financial statement (which I now label as PX-1), I made two determinations (current and one year hence) of the appropriate wage garnishment. Petitioner has a short term personal loan which was said to be retired in one year. Petitioner is also paying back a loan on borrowed funds from his 401K account. For the first year, Petitioner may continue the 401K loan payback at the current rate. After one year, Petitioner will be only be allowed credit in the Financial Hardship Calculation for the 401K loan payback at half of the current rate. The two calculations are enclosed.²

Conclusions of Law

1. Petitioner Brian E. Ward is indebted to USDA's Rural Development program in the amount of \$20,657.79.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$5,784.18.

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.

² The Financial Hardship Calculation is not posted on the OALJ website.

5. The administrative wage garnishment by RD against this debtor is suspended at this time.

6. After one year, RD may garnish the wages of Petitioner at the rate of 4% of his monthly disposable income.

Order

The requirements of 31 C.F.R. ¶ 288.11(i) & (j) have been met. The Administrative Wage Garnishment against this debtor is suspended at this time. After one year, Debtor's wages may be garnished at the rate of 4%. After two years, RD may reassess Debtor's financial position and modify the garnishment percentage as circumstances dictate.

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

JAMES P. HURT
Hearing Official

April 21, 2010