

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

In re:	)	<b>AWG Docket No. 10-0116</b>
	)	
Jason James,	)	
	)	
Petitioner	)	<b>Decision</b>

Pursuant to a Hearing Notice issued on February 19, 2010, I held a hearing by telephone, on April 27, 2010, at 11:00 AM Eastern Time, in consideration of a Petition seeking to dispute the terms of a proposed repayment schedule for a debt that Petitioner incurred under a Single Family Housing Mortgage Loan. Petitioner and his former wife had signed a promissory note to secure a home mortgage loan given her by Respondent, USDA, and Rural Development, which has not been fully repaid, and has resulted in the garnishment of Petitioner's wages for nonpayment of the amount still owed.

Petitioner did not participate in the hearing. Petitioner was instructed by the Hearing Notice to file: 1. completed forms respecting his current employment, general financial information, assets and liabilities, and monthly income and expenses; 2, a narrative of events or reasons why she cannot pay the alleged debt and indicating what portion of the alleged debt he is able to pay through wage garnishment; 3. supporting exhibits; and 4. lists of the exhibits and witnesses who would testify in support of his petition. He was further instructed to contact my secretary, Ms. Marilyn Kennedy, and give Ms. Kennedy a telephone number where Petitioner could be reached at the time of the scheduled hearing. Petitioner failed to comply with any of the instructions. At the time of the schedule hearing, he did not answer calls to her listed telephone. My office called the number of the employer listed in the Petition and was given a

telephone where he was working. Upon calling the number the person who answered did not know of him. His employer was called again, and this time was given his cell phone number. The number was called and he was not reached; instead the call went into voicemail.

Respondent participated in the hearing through its representatives, Gene Elkin Legal Liaison and Mary Kimball, Accountant for the New Initiatives Branch, USDA Rural Development. Respondent pointed out that none of their mailings to Petitioner respecting this hearing were returned and presumably were received.

Under 31 C.F.R. § 285.11 (f) (2), a hearing on a Petition challenging wage garnishment may be at the agency's option, either oral or written. An oral hearing may be conducted by telephone conference and is only required when the issues in dispute cannot be resolved by review of the documentary evidence 31 C.F.R § 285.11 (f) (3).

An oral hearing was scheduled to hear and decide Petitioner's concerns. Petitioner never advised the Hearing Clerk, the Respondent, or this office that he had moved or that he could not be personally contacted on his listed telephone number. All mail sent to Petitioner's In that Petitioner whenever advised Hearing Clerk, the Respondent, or this office that she had moved or that she could not be personally contacted on her listed telephone number, and that all mail sent to Petitioner's only listed address was never returned as undeliverable by the U.S. Post Office. Reasonable efforts were made on the day of the scheduled hearing to contact him, but were to no avail. Accordingly, the petition is being dismissed for Petitioner's failure to participate and present evidence or arguments to refute the documents provided by Respondent showing the existence of Petitioner's obligation to pay the debt still owed under the promissory note he signed with USDA-RHS (RX-1).

The promissory note was for \$67,226.00 in respect to the home mortgage loan USDA-RH gave to Petitioner and his former wife, on April 9, 2003, for property located at 1113 East Ridge Drive, Decatur, Indiana. The property was sold at a short sale, on June 22, 2005, for \$28,787.86. The total amount due on the mortgage debt prior to the sale was \$67,349.59. After the sale funds were applied to the debt, the amount due from Petitioner was \$38,561.73. Respondent has received payments from Treasury which after the deduction of fees leaves a present debt balance of \$38,615.60. Potential collection fees assessed by the United States Treasury Department are \$11,584 which makes the balance due at Treasury \$50,200.28. (RX-4). The Petitioner appears to be employed and has provided no evidence showing that the present collection of any part of the debt would cause Petitioner undue, financial hardship within the meaning and intent of the provisions of 31 C.F.R § 285.11. Therefore, the Petition is dismissed and the proceedings to garnish Petitioner's wages may be resumed provided the amount of wages garnished does not exceed 15% of his disposable income.

Petitioner is advised, however that if she telephones the private agency engaged by Treasury to pursue the debt's collection, he might be able to settle the debt at a lower amount with lower payments.

Dated \_\_\_\_\_

\_\_\_\_\_  
Victor W. Palmer  
Administrative Law Judge