

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 10-0123
)
Robert Barnes,)
)
Petitioner)

Final Decision and Order

This matter is before me upon the request of the Petitioner, Robert Barnes, for a hearing in response to efforts of Respondent to institute a federal administrative wage garnishment against him. On March 16, 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 22, 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-6 on March 31, 2010 with the OALJ Hearing Clerk and certified that it mailed a copy of the same to Petitioner. Mr. Barnes stated that he received RD's Exhibits and witness list. Following the hearing, RD filed RX-7. As a result of Petitioner's inquiries concerning his prior escrow payments, RD filed additional Narrative and exhibits dated June 8, 2010 which I now label as RX-8 (25 pages).

Petitioner submitted his exhibits on April 12, 2010 consisting of a two-page hand written letter and Exhibits marked as EX-1 through EX-10. EX-10 contained his financial statement

under oath.

Petitioner owes \$45,165.25 on the USDA RD loan as of today, and in addition, potential fees of \$12,646.27 due the US Treasury pursuant to the terms of the Promissory Note.

Findings of Fact

1. On July 2, 1990, Petitioner Robert and Carol Barnes (a/k/a Carol Moore) obtained a USDA FHA home mortgage loan for property located at 1## W. P*** Street, Schuylkill Haven, PA, 179**.¹ Petitioner was co-signor to a promissory note for \$61,500. RX-1 @ p. 1 of 3.

2. Borrowers become delinquent on their payments and were defaulted on August 23, 2003. RX-3.

3. RD obtained a comparative sales appraisal on November 3, 2003 with an opinion that the value of the property was \$57,000. RX-7.

4. RD obtained a default judgment in Civil Action 1CV-04-1095 relating to a foreclosure against Petitioner and Carol Barnes-Moore on September 27, 2004. EX-8. Petitioner contends that he did file a timely answer to the foregoing civil action, but did have any documentation.

5. The property was sold in a judicial foreclosure sale on August 30, 2005 for \$24,000. Narrative. The net amount of sale proceeds received by RD was \$22,619.80. RX-4. At the time of the judicial sale, the balance due on the note was \$72,981.05. Narrative, RX-4 @ p. 1 of 2.

6. After the sale, Treasury recovered an additional \$5,298.00 - thus reducing the amount due from Petitioner to \$45,165.25. Narrative, RX-4 @ p. 1 of 2.

7. The potential fees due U.S. Treasury pursuant to the Loan Guarantee Agreement are \$12,646.27. Narrative, RX-5.

8. Carol Barnes was discharged in bankruptcy on October 1, 2008. RX-6 @ p 2 of 2.

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

¹Complete address maintained in USDA records.

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

11. Petitioner provided a financial schedule of expenses and stated his gross bi-weekly income. He subsequently provided a recent bi-weekly pay stub. His pay stub revealed that he was allowed to work a substantial number of paid overtime hours during the recent bi-weekly period. I apportioned the deductions according to the non-overtime wages.

12. I took into consideration the below average expenditures for food, housing and transportation.

13. Using the Financial Hardship Calculation program and data from Petitioner's sworn testimony and financial statement (EX 10), I made a calculation of the appropriate wage garnishment. Petitioner has a pending medical debt which was only partially paid by insurance due to a late filed claim. I am allowing a monthly retirement of half of that debt over twelve months. RD does not object to recognition of Petitioner's religious tithing. Petitioner's son is serving in Iraq and although the car payments are paid by the son's military pay, Petitioner will be allowed the monthly insurance to maintain the state license tags for the son's car. The calculations are enclosed.²

Conclusions of Law

1. Petitioner Robert Barnes is indebted to USDA's Rural Development program in the amount of \$45,165.25.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$12,646.27.

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,

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

employment circumstances, and living expenses.

5. RD may **NOT** administratively garnish Petitioners wages at this time.
6. After one year, RD may reassess Petitioner's financial hardship criteria.

Order

1. The requirements of 31 C.F.R. ¶ 288.11(i) & (j) have been met.
2. The Administrative Wage Garnishment against this debtor is suspended at this time.
3. After one year, RD may reassess 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.

JAMES P. HURT

Hearing Official

June 15, 2010