

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 10-0288
)
William Smith)
)
Petitioner)

Final Decision and Order

This matter is before me upon the request of the Petitioner (or “Debtor”), William Smith, for a hearing in response to efforts of Respondent to institute a federal administrative wage garnishment against him. On June 29, 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 August 13, 2010. USDA Rural Development Agency (RD) was represented by Mary Kimball who testified on behalf of the RD agency. Ms. Marcia Moore of RD was attending but did not testify.

Mr. Smith 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-5 on July 8, 2010 with the OALJ Hearing Clerk and certified that it mailed a copy of the same to Petitioner. Mr. Smith stated that he received RD’s Exhibits and witness list. Mr. Smith filed his financial statements (4 pages) which I now label as PX-1. Following the hearing, Mr. Smith filed a bi-weekly pay stub from his employer which I now label as PX-2.

Petitioner owes \$59,794.39 on the USDA RD guaranteed loan as of today, and in addition, potential fees of \$16,742.43 due the US Treasury pursuant to the terms of the Promissory Note and guarantee.

Findings of Fact

1. On July 15, 2005, Petitioner William Smith obtained a USDA FHA home mortgage loan for property located at 6** Cha*** St, Cadillac, MI, 496**. ¹ Petitioner was signor to a Single Family Housing Loan Guarantee on May 31, 2005 for \$98,000. RX-1.

2. The Borrower became delinquent on his payments and was defaulted on September 1, 2009. RX-3 @ p. 3 of 8.

3. The mortgaged property was acquired by the lender in a foreclosure sale for \$67,150.00 on March 14, 2008. RX-3 @ p. 3 of 8.

4. The net amount of funds received by RD from the foreclosure sale was \$52,000 plus a onetime reduction of \$8,173.41 for a total of \$60,285.11. RX-3.

5. At the time of the judicial sale, the principal balance due on the note was \$95,510.93. Narrative, RX-2.

6. On September 21, 2008 the house was appraised “as is” for \$68,000. RX-3 @ p. 3 of 8.

7. On September 25, 2008, a broker’s BPO valuation of the house was also \$68,000. RX-3 @ p. 4 of 8.

8. The house was originally listed on October 21, 2008 for \$68,000 and on January 21, 2009 relisted at \$58,500.00. RX-3 @ p. 4 of 8.

9. The house was sold on March 17, 2009 at \$52,000.00. RX- 3 @ p. 4 of 8.

10. USDA RD paid Chase Bank, N.A. \$60, 285.11 under the guarantee agreement for accrued interest, protective advances, attorney fees, appraisal and property inspections and estimated lender selling costs. RX -2.

11. After the final sale, USDA has received \$490.72 from Mr. Smith and he now owes \$59,794.39. Narrative.

12 The potential fees due U.S. Treasury pursuant to the Loan Guarantee Agreement are

¹Complete address maintained in USDA records.

\$16,742.43. Narrative, RX-5.

13. Mr. Smith is liable on the debt under the terms of the Promissory Note.

14. Mr. Smith stated that he has been gainfully employed as a youth counselor in a religious organization, but he raised issues of financial hardship.

15. Mr. Smith provided a financial schedule of expenses and a bi-weekly pay stub from his employer.

16. Using the Financial Hardship Calculation program and data from his sworn testimony and financial statement (PX – 1 & 2), I made a calculation of the appropriate wage garnishment. The calculations are enclosed.²

Conclusions of Law

1. Petitioner, Paul William Smith, is indebted to USDA's Rural Development program in the amount of \$59,794.39.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$16,742.43.

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.

5. RD may administratively garnish Petitioner's wages in the amount of 5% percent of his Monthly Disposable Income.

6. After one year, RD may reassess Petitioner's financial hardship criteria.

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

Order

1. The requirements of 31 C.F.R. ¶ 288.11(i) & (j) have been met.
2. The Administrative Wage Garnishment may proceed at this time at the rate of 5.0% of his Monthly Disposable Income.
3. After one year, RD may reassess the 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
August 21, 2010