

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) **AWG Docket No. 10-0367**
Nick Adkins)
)
Petitioner) **Decision and Order**

1. The hearing by telephone was held on November 3, 2010. Nick Adkins, also known as Nick W. Adkins, the Petitioner (“Petitioner Adkins”), is represented by Joel C. Elliott, Esq.
2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and is represented by Mary E. Kimball. The address for USDA Rural Development for this case is

Mary E. Kimball, Branch Accountant
USDA / RD New Program Initiatives Branch
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3. I encourage **Petitioner Adkins and the collection agency** to work together to **establish a repayment schedule** rather than immediately proceeding with garnishment, even though this Decision authorizes garnishment, up to 3% of Petitioner Adkins’ disposable pay through December 2011; and up to 7.5% of Petitioner Adkins’ disposable pay thereafter. Petitioner Adkins, obviously, will have to make himself available to the collection agency if he wants to negotiate. *See* paragraph 13.

Summary of the Facts Presented

4. Petitioner Adkins provided documents including the Release of Deed of Trust executed in 2000, the completed “Consumer Debtor Financial Statement” plus earnings

records, and his Hearing Request documents submitted in May 2010, all of which are admitted into evidence, together with the testimony of Petitioner Adkins.

5. USDA Rural Development provided documents, including its Exhibits, plus Narrative, Witness & Exhibit List (filed September 3 and November 5, 2010), all of which are admitted into evidence, together with the testimony of Ms. Kimball.

6. The Release of Deed of Trust (prepared and executed by USDA Rural Development in 2000 in connection with a short sale) has a box checked that includes as part of the preprinted form, “For and in consideration of the *payment and satisfaction in full of the note(s) and indebtedness*, with interest as specified therein”. Petitioner Adkins argues that he has owed nothing more on the Farmers Home Administration loan since the short sale in 2000, especially in light of that language in the Release of Deed of Trust.

7. I find that USDA Rural Development made a mistake in checking the box on the Release of Deed of Trust that indicated payment in full, and that that mistake did not cancel the debt that remained after the short sale in 2000. I find that Petitioner Adkins owes to USDA Rural Development **\$17,878.19** in repayment of a Farmers Home Administration loan made in 1984 for a home in Texas, the balance of which is now unsecured (“the debt”).

8. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$17,878.19**, would increase the current balance by \$5,005.89, to \$22,884.08. *See* USDA Rural Development Exhibits, esp. RX-5.

9. Petitioner Adkins proved that he and his wife support themselves and help support their two adult children who live at home with them. Their son works in the oil field and is not currently employed; their daughter is studying nursing and has educational expenses that they help pay. Petitioner Adkins is paying Federal income taxes for prior year(s); and considerable amounts on a motor vehicle loan, a 401k loan, a travel trailer loan, HSBC credit, and the like. The Internal Revenue Service debt should be paid in about a year. Other debts will require 2, 3, or 4 years of payments.

10. I calculate Petitioner Adkins’ disposable income (he cannot count on overtime) as [REDACTED] per month (gross pay minus Federal, Social Security, Medicare, Medical, Dental, and Vision withholding). Although Garnishment at 15% of Petitioner Adkins’ disposable pay would yield roughly [REDACTED] per month in repayment of the debt, he cannot withstand garnishment in that amount without hardship for his family and himself. To prevent hardship, potential garnishment to repay “the debt” (*see* paragraph 3) must be limited to 3% of Petitioner Adkins’ disposable pay through December 2011; and no more than 7.5% of Petitioner Adkins’ disposable pay thereafter. 31 C.F.R. § 285.11.

11. I have taken into account not just Petitioner Adkins' disposable pay, but also his wife's disposable pay, and the financial contributions that can be expected from the grown children, and have compared that with the reasonable and necessary living expenses of his family unit. [Petitioner Adkins and his wife submitted excellent documentation.] I have taken these resources and obligations into account in limiting the potential garnishment to repay "the debt" (*see* paragraph 7) to no more than 3% of Petitioner Adkins' disposable pay through December 2011; and no more than 7.5% of Petitioner Adkins' disposable pay thereafter. 31 C.F.R. § 285.11.

12. Petitioner Adkins is responsible and willing and able to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

13. Through December 2011, garnishment up to 3% of Petitioner Adkins' disposable pay; and thereafter, garnishment up to 7.5% of Petitioner Adkins' disposable pay; is authorized. *See* paragraphs 9, 10 and 11. I encourage **Petitioner Adkins and the collection agency to negotiate promptly** the repayment of the debt. Petitioner Adkins, this will require **you** to telephone the collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Adkins, you may choose to offer to the collection agency to compromise the debt for an amount you are able to pay, to settle the claim for less.

14. Petitioner Adkins has made progress repaying, in 2001, 2003, 2004, and 2005. *See* RX-4, esp. p. 2.

Findings, Analysis and Conclusions

15. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Adkins and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.

16. Petitioner Adkins owes the debt described in paragraphs 7 and 8.

17. **Garnishment is authorized**, as follows: through December 2011, garnishment up to 3% of Petitioner Adkins' disposable pay; and thereafter, garnishment up to 7.5% of Petitioner Adkins' disposable pay. 31 C.F.R. § 285.11.

18. Repayment of the debt may also occur through *offset* of Petitioner Adkins' **income tax refunds** or other **Federal monies** payable to the order of Mr. Adkins.

Order

19. Until the debt is repaid, Petitioner Adkins shall give notice to USDA Rural Development or those collecting on its behalf, of any changes in his mailing address; delivery address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).

20. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment, up to 3% of Petitioner Adkins' disposable pay through December 2011; and garnishment up to 7.5% of Petitioner Adkins' disposable pay thereafter. 31 C.F.R. § 285.11.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties. **A courtesy copy shall be mailed (ordinary mail) to Joel C. Elliott, Esq.**

Done at Washington, D.C.
this 3rd day of December 2010

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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