

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 10-0396

In re: Larry McCauley

Petitioner

and

AWG Docket No. 10-0397

In re: Theresa McCauley,

Petitioner

Decision and Order

This matter is before the Administrative Law Judge upon the request of Petitioners for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On September 27, 2010, a Prehearing Order was entered in Docket No. 10-0397 to facilitate a meaningful conference with the parties as to how the cases would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing on December 13, 2010. A review of the files indicated that the Petitioners are husband and wife and that the debt sought to be collected in the two cases is a joint marital debt of the Petitioners. Accordingly, the cases were consolidated for hearing and a single Decision and Order will be entered, with copies to be placed in the individual docket files.

The Narrative of the Respondent was filed, together with supporting documentation on November 23, 2010. The Petitioners filed their documentation with the Hearing Clerk on November 18, 2010. In their respective requests for hearing, the Petitioners indicate that they turned the house back and it was resold. At the telephonic hearing, the testimony of Mary E. Kimball, Accountant for the New Program Initiatives Branch, Rural Development, United States Department of Agriculture, St. Louis, Missouri and the Petitioners testified.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On May 18, 1988, the Petitioners received a home mortgage loan in the amount of \$31,000.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) for property located in Ralls, Texas. RX-1, 2.
2. The Petitioners defaulted in their payments and the property was sold at a foreclosure sale on November 5, 2002 with proceeds realized from that sale in the amount of \$16,300.00, leaving a balance due of \$20,077.13. RX-6.
3. Treasury offsets totaling \$3,688.42 exclusive of Treasury fees have been received. RX-6.
4. The remaining unpaid debt is in the amount of \$16,388.71 exclusive of potential Treasury fees. RX-4.

5. The administrative wage garnishment of both husband and wife would impose a significant financial hardship upon them as a couple and entering into a payment plan or tendering a lump sum settlement with Treasury would be in their best interests.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. The Petitioners, Larry McCauley and Theresa McCauley are indebted to USDA Rural Development in the amount of \$\$16,388.71 exclusive of potential Treasury fees for the mortgage loan extended to them.
3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.
4. The Respondent is entitled to administratively garnish the wages of the Petitioner.

Order

1. The wages of Larry McCauley shall be subjected to administrative wage garnishment at the rate of 5% of his disposable pay, or such lesser amount as might be specified in 31 C.F.R. § 285.11(i) for a period of six months, after which time the rate shall be raised to 15% of his disposable pay.
2. The wages of Theresa McCauley shall be subjected to administrative wage garnishment at the rate of 5% of her disposable pay, or such lesser amount as might be specified in 31 C.F.R. § 285.11(i) for a period of six months, after which time the rate shall be raised to 15% of her disposable pay.

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

December 14, 2010

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Larry McCauley
Theresa McCauley
Mary Kimball
Dale Theurer

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