

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
 Brian Bowen,) AWG Docket No. 10-0392
)
)
 Petitioner)

Decision and Order

This matter is before me upon the request of the Petitioner, Brian Bowen, for a hearing in response to efforts of Respondent, USDA’s Rural Development Agency, Rural Housing Service, to institute a federal administrative wage garnishment against him. On August 26, 2010, I issued a Pre-hearing Order requiring the parties to exchange information concerning the amount of the debt. Rural Housing filed a copy of its Narrative along with exhibits RX-1 through RX-7 on September 3, 2010. On November 15, 2010, I issued an order rescheduling the hearing.

I conducted a telephone hearing on December 6, 2010. Rural Housing was represented by Mary Kimball who testified on behalf of the agency. Mr. Bowen represented himself. The witnesses were sworn. Mr. Bowen acknowledged that he received a copy of Rural Housing’s Narrative and Exhibits. Mr. Bowen has not filed a Narrative or a Consumer Debtor Financial Statement.

On July 14, 1993, Mr. Bowen and his wife Christie borrowed \$36,280.00 from USDA Farmers Home Administration to purchase their residence in Atoka, OK. On March 16, 1998, the Bowens were granted a divorce by the District Court of Atoka County, Oklahoma. In the Divorce Decree Mrs. Bowen was given the house. The Court also stated that Mrs. Bowen “shall be responsible for the indebtedness relating to the said marital home and shall hold [Mr. Bowen] harmless for the same.” Divorce Decree page 2 ¶ 5. Mr. Bowen did not seek a release from

USDA relieving him of his obligation for the remainder of the debt. Because Mr. Bowen did not obtain a release from his obligation, he is responsible for the amount of the deficiency. The order from the District Court does not relieve Mr. Bowen from the requirement of satisfying the debt but rather gives him recourse against his ex-wife if he is required to make payment. I suggest that Mr. Bowen obtain legal counsel to determine his rights in pursuing a recovery from Christie Bowen.

The loan defaulted and on November 2, 2000, the house was disposed of by way of a short sale. USDA received \$22,579.40 from the short sale and applied that to the outstanding balance. At the time of the sale the balance owed on the loan was \$52,509.74 – \$35,992.93 in principal, \$10,851.68 in interest and \$5,665.13 in fees. Applying the proceeds from the short sale along with a \$45.92 insurance refund and \$3,534.00 subsequently collected by Treasury leaves a current balance of \$26,350.42.

Based on the testimony during the hearing and the record before me, I conclude that Mr. Bowen owes \$26,350.42 on the USDA Rural Housing loan. In addition, there are potential fees of \$7,378.12 due the US Treasury for the cost of collection. In determining the percentage of garnishment, if any, to be authorized for collection, I examine the petitioner's financial condition. This is usually accomplished by reviewing the Consumer Debtor Financial Statement. This gives me the opportunity to determine if a financial hardship exists that would preclude garnishment at this time; or, if the petitioner's financial condition indicates that I should limit the garnishment to a percentage below the maximum 15% authorized by the statute. It is the petitioner's burden to provide this information to me. Mr. Bowen did not file a Consumer Debtor Financial Statement, however, he testified that his income is [REDACTED] to [REDACTED] per month.

Without the information contained in the Consumer Debtor Financial Statement, there is no evidence to indicate that any financial hardship exists. Therefore, I am only able to conclude that Mr. Bowen's disposable pay supports garnishment and that no financial hardship exists that would limit garnishment. I find that garnishment is appropriate, up to 15% of Mr. Bowen's disposable pay.¹

I encourage Mr. Bowen 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 15% of Mr. Bowen's disposable pay.

Findings of Fact

1. On July 14, 1993, Brian Bowen and his wife Christie, borrowed \$36,280.00 from USDA Farmers Home Administration to purchase their residence in Atoka, OK.
2. On March 16, 1998, the Bowens were granted a divorce. In the Divorce Decree Mrs. Bowen was given the house and responsibility for the indebtedness relating to the house.
3. The loan defaulted and a short sale was held on November 2, 2000. The loan balance at that time was \$52,509.74 including \$35,992.93 in principal, \$10,851.68 in interest and \$5,665.13 in fees. USDA received \$22,579.40 from the short sale.

¹On December 12, 2010, at approximately 10:20 AM, I received a telephone call from Ms. Kimball. I view this as an inappropriate ex-parte communication. I informed her that I could not discuss the case without Mr. Bowen being part of the discussion. She went on to inform me that Rural Development intended to credit Mr. Bowen's account but would wait until I decided the case before doing the paperwork. In addition, Ms. Kimball attempted to clarify a point made during discussion but I would not let her proceed. I have not used any information provided during this phone call in making my decision on this case. In the future, if Rural Development desires to clarify a point made during the hearing or notify me of changes in its position, it may file a written notice, copying the petitioner.

4. USDA applied the proceeds from the short sale along with a \$45.92 insurance refund and \$3,534.00 subsequently collected by Treasury to the loan balance leaving leaves a balance of \$26,350.42. In addition, there are potential fees due to the U.S. Treasury in the amount of \$7,350.42 for a total amount due of \$33,728.54.

Conclusions

1. The Secretary of Agriculture has jurisdiction over the parties, Mr. Bowen and USDA Rural Development Agency, Rural Housing Service; and over the subject matter, which is administrative wage garnishment.

2. Petitioner Brian Bowen is indebted to USDA's Rural Development Agency, Rural Housing Service program in the amount of \$26,350.42

3. In addition, Mr. Bowen is indebted for potential fees to the US Treasury in the amount of \$7,350.42.

4. All procedural requirements for administrative wage garnishment set forth in 31 C.F.R. § 285.11 have been met.

5. Mr. Bowen did not provide a Consumer Debtor Financial Statement. Therefore, I conclude that Mr. Bowen disposable pay supports garnishment, up to 15% of Mr. Bowen's disposable pay (within the meaning of 31 C.F.R. § 285.11); and Mr. Bowen has no circumstances of financial hardship (within the meaning of 31 C.F.R. § 285.11).

Order

Until the debt is fully paid, Mr. Bowen shall give notice to USDA Rural Development Agency, Rural Housing Service 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).

USDA Rural Development Agency, Rural Housing Service, and those collecting on its behalf, are authorized to proceed with garnishment, up to 15% of Mr. Bowen's disposable pay.

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

Done at Washington, D.C.
this 12th day of January 2011

STEPHEN M. REILLY
Hearing Official