

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re: Mario Barrientos,)	AWG Docket No. 11-0057
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Petitioner)	Decision and Order

This matter is before me upon the request of the Petitioner, Mario Barrientos, for a hearing to contest the efforts of the Respondent, USDA/Rural Development, to garnish his wages in order to collect a debt remaining from a mortgage loan it provided to him and to his former wife, Pearl Barrientos, on a house they had purchased together in Cameron County , TX.. A hearing was held by telephone conference, on February 3, 2011, and both Petitioner, Mario Barrientos, and Respondent’s representative, Mary Kimball, participated and gave sworn testimony. Respondent’s exhibits RX-1 through RX-7 were received in evidence after being indentified and authenticated by Ms. Kimball.

The exhibits showed that the mortgage loan was in the amount of \$44,280.00 and was secured by a promissory note and a deed of trust dated November 9, 1993 (RX-1 and RX-2).

Mr. Barrientos completed and filed a Consumer Debtor Financial Statement and testified that, in 1997, he divorced Pearl Barrientos and has since remarried. At the time of the divorce, Pearl Barrientos was given possession of the house and was to pay the mortgage while Petitioner was ordered to pay child support. She failed to make the mortgage payments and a foreclosure sale was held on April 14, 2000 at which time \$56,650.90 was owed for principal, interest and various fees. USDA received \$36,001.00

from the sale and after the sale proceeds were posted, \$20,649.90 was owed on the debt. Since the sale, Treasury has collected some of the debt so that the current debt is \$20,546.16 plus potential fees to Treasury of \$5,753.01, or \$26,299.47 total (RX-7). Mr. Barrientos has remarried and shares monthly household expenses with his new wife. He had been laid off by a former employer and was unemployed until 10 months ago when he secured employment as a construction helper. His most recent weekly paycheck shows his net monthly earnings to be [REDACTED] and his monthly expenses to be [REDACTED]

Accordingly, USDA, Rural Development has met its burden under 31 C.F.R. §285.11(f)(8) that governs administrative wage garnishment hearings, and has proved the existence and the amount of the debt owed by the Petitioner. On the other hand, Petitioner has shown that he would suffer undue financial hardship if any amount of money is garnished from his disposable income. In light of the documents filed by Petitioner and his sworn testimony, I have concluded that garnishment should not take place at any time during the next six (6) months. During that time, Mr. Barrientos should undertake to contact Treasury to discuss dismissal of the debt for reason of financial hardship.

Under these circumstances, the proceedings to garnish Petitioner's wages are suspended and may not be resumed for six (6) months from the date of this Order.

Dated:

Victor W. Palmer
Administrative Law Judge