

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0122

In re: JARED FELKINS,

Petitioner

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the request of Jared Felkins (“Petitioner”) for a hearing to address the existence or amount of a debt alleged to be due, and if established, the propriety of imposing administrative wage garnishment. By Order issued on February 9, 2011, the parties were directed to participate in a conference to discuss the resolution of the case and to exchange information and documentation concerning the existence of the debt. In addition, the matter was set for a telephonic hearing to commence on March 15, 2011 and deadlines for filing documents with the Hearing Clerk’s Office were established.

The Respondent filed a Narrative, together with supporting documentation¹ on February 18, 2011 and Petitioner filed a Consumer Debtor Financial Statement² on March 15, 2011. On that date, Respondent filed an amended Narrative and document. At the hearing, Petitioner was represented by counsel, Robert K. Jordan, Esq. Testimony was received from Mary E. Kimball, Accountant for the New Program Initiatives Branch of Rural Development, USDA, Saint Louis, Missouri and from the Petitioner.

¹ References to Respondent’s exhibits herein shall be denoted as “RX-#”.

² This exhibit has been identified as, and shall be referred to herein as, “PX-1”.

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 April 8, 2005, the Petitioner received a home mortgage loan in the amount of \$99,000.00 from Taylor Mortgage for residential property located in Boaz, Alabama.
2. Before executing the promissory note for the loan, on March 11, 2005, Petitioner requested a Single Family Housing Loan Guarantee from the United States Department of Agriculture (USDA), Rural Development (RD), which was granted. RX-1.
3. By executing the guarantee request, Petitioner certified that he would reimburse USDA for the amount of any loss claim on the loan paid to the lender or its assigns.
4. The Petitioner subsequently defaulted on the loan on November 1, 2007, when the balance due on the loan was \$96,026.10.
5. On November 8, 2008, foreclosure action was undertaken by JP Morgan Chase Bank, N.A.³ (“Lender”), with foreclosure concluding on December 4, 2008 with sale of the property to the Lender for \$95,200.00. RX-2.
6. On January 14, 2009, Lender sold the property for \$91,500.00. RX-5.
7. Lender’s loss claim of \$18,765.40, representing principal differential, accrued interest, protective advances, attorney fees, appraisal and property inspection fees, and lender closing costs, was paid by USDA on March 3, 2009. RX-3; RX-4.
8. USDA entered the amount of the loss claim that it paid as a debt due from Petitioner, but subsequently entered into an agreement with Petitioner to settle the debt by relieving \$9,765.40

³ Although the original loan was made to Petitioner by Taylor Mortgage, a summary of the activity regarding the loan reflects that at the time of foreclosure, the Assignment Entity, Servicing Lender, and Loss Payee were consistently JP Morgan Chase Bank, N.A. RX-3.

of the total indebtedness and accepting monthly installment payments to satisfy the remaining \$9,000.00. RX 6.

9. Petitioner made monthly payments of \$150.00 each on November 5, 2009 and November 24, 2009, which were applied to Petitioner's account.

10. Although Petitioner attempted to continue making monthly payments, his proffered payments were returned by mail.

11. USDA deemed Petitioner delinquent on the installment plan, and canceled the agreement on February 4, 2010.

12. The outstanding indebtedness in the amount of \$8,700.00 was referred to the United States Department of Treasury ("Treasury") for collection. RX 7.

13. Treasury offsets totaling \$3,822.64 exclusive of Treasury fees have been received and applied to the balance. RX-5.

14. On November 23, 2010, Treasury, through its agent, issued a notice to Petitioner of intent to garnish his wages.

15. Two wage garnishments were effected on Petitioner's salary on February 14, 2011 and March 1, 2011, in the amount of \$222.97 each, resulting in a debt balance of \$5,619.60, exclusive of Treasury fees.

16. Petitioner timely requested a hearing, which was held on March 15, 2011.

17. Petitioner does not contest the validity of the debt, but contends that the wage garnishment effected against his salary represented a substantial financial hardship.

18. The Petitioner's spouse is not employed, but received unemployment benefits that are expected to terminate in May, 2011.

19. Despite the contribution of Petitioner's wife's benefits, the family income exceeds the family monthly expenses. With their income level, Petitioner is unlikely to be in a position to liquidate the debt owed at this time.

20. Petitioner expects that his financial situation may improve when his wife resumes employment.

21. Petitioner expressed willingness to attempt to resolve the debt.

22. Even allowing for Petitioner's wife's return to work, the family income will not withstand garnishment at the level of legal limits; however, Petitioner should be able to absorb garnishment at a percentage lower than the maximum.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.

2. Petitioner is indebted to USDA Rural Development in the amount of \$5,619.60 exclusive of potential Treasury fees for the mortgage loan extended to him.

3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

4. The Petitioner is under a financial hardship at this time that appears to be temporary in nature.

5. The Respondent is entitled to administratively garnish the wages of the Petitioner when the financial hardship is anticipated to ease; however Respondent shall not be entitled to garnish more than 5% of Petitioner's wage.

6. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

For the foregoing reasons, the wages of Petitioner shall **NOT** be subjected to administrative wage garnishment at this time. As of September 15, 2011, garnishment up to 5% of Petitioner's disposable pay is authorized. 31 C.F.R. §285.11.

Petitioner is encouraged in the interim to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Until the debt is satisfied, Petitioner shall give to USDA RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact.

Petitioner may direct questions to RD's representative Mary Kimball, c/o:

USDA New Program Initiatives Branch
Rural Development Centralized Servicing Center
4300 Goodfellow Blvd. F-22
St. Louis, MO 63120
314-457-5592
314-457-4426 (facsimile)

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

So Ordered this _____ day of March, 2011 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge