

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0105

In re: HANK MESSER,  
Petitioner

**DECISION AND ORDER**

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the request of Hank Messer (“Petitioner”) for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development (“Respondent”; “RD”), and if established, the propriety of imposing administrative wage garnishment. By Order issued on February 7, 2011, the parties were directed to provide information and documentation concerning the existence of the debt and deadlines were set for the submissions. In addition, the matter was set for a telephonic hearing to commence on March 31, 2011.

The Respondent filed a Narrative, together with supporting documentation<sup>1</sup> on February 18, 2011 and Petitioner filed a Consumer Debtor Financial Statement<sup>2</sup> on March 24, 2011. At the hearing, Petitioner represented himself and Respondent was represented by Mary E. Kimball, Accountant for the New Program Initiatives Branch of RD, Saint Louis, Missouri. Petitioner testified, as did his wife, Sherryl Messer. In addition, Realtor Bruce Gooding and Ms. Kimball testified.

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

<sup>2</sup> 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 December 29, 1988, the Petitioner and his wife signed a promissory note for a home mortgage loan in the amount of \$34,120.00 from RD for residential property located in Hugo, Oklahoma. RX-1; RX-2.
2. The Petitioner subsequently defaulted on the loan when the balance due on the loan was \$33,407.57, of which \$31,154.03 represented principle; \$1500.12 represented interest; and \$753.42 represented fees.
3. With the help of realtor Bruce Gooding, on January 24, 1997, Petitioner and his wife sold the property at a short sale that yielded the sum of \$12,600.98.
4. A balance due on the loan of \$20,806.59 was referred to the U.S. Department of Treasury (“Treasury”) for collection, as required by prevailing statutes and regulations. RX 4; Respondent’s Narrative.
5. Treasury offsets totaling \$5,137.18 exclusive of Treasury fees have been received and applied to the balance. RX-4.
6. The outstanding indebtedness is now \$15,669.41 plus potential fees of \$4,387.43, for a balance due of \$20,056.84. RX-5.
7. On November 10, 2010, Treasury, through its agent, issued notices to Petitioner of intent to garnish wages.
8. Petitioner timely requested a hearing, which was held on March 31, 2011.
9. Petitioner contested the validity of the debt, and testified that at the time of the short sale, he believed from representations of RD officials that the balance of the debt would be forgiven.

10. Realtor Mr. Gooding testified that he believed that the debt would be reduced.
11. Petitioner did not recall receiving copies of Respondent's offer to compromise the debt, mailed in 2001.
12. Petitioner Hank Messer is self employed.
13. Petitioner filed a Consumer Debtor Financial Report, PX-1, signed by him and his wife, and he accepts joint and several ownership of and liability with his wife for their monthly income and expenses.
15. Petitioner expressed willingness to attempt to resolve the debt.

### **CONCLUSIONS OF LAW**

1. The Secretary has jurisdiction in this matter.
2. Petitioner is indebted to USDA Rural Development in the amount of \$15,669.41 plus potential fees of \$4,387.43, for a balance due of \$20,056.84 for the balance due after sale on the mortgage loan extended to him and his wife.
3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.
4. Petitioner Hank Messer is self-employed and therefore not subject to wage garnishment
5. Treasury shall remain authorized to undertake any and all other appropriate collection action.

### **ORDER**

For the foregoing reasons, no administrative wage garnishment against Petitioner may be undertaken, although Petitioner is liable for the debt.

Petitioner is encouraged 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.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA RD or those collecting on Treasury's behalf, notice of any change in 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 31<sup>st</sup> day of March, 2011 in Washington, D.C.

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Janice K. Bullard  
Administrative Law Judge