

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 11-0255

In re: Danny Barfield

Petitioner

Decision and Order

This matter is before me upon the request of Petitioner 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 August 5, 2011, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case 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.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-7 on August 5, 2011. The Petitioner filed his financial statement on August 16, 2011 (which I now label as PX-1) and his Narrative (which I now label as PX-2).

On August 17, 2011, at the time set for the hearing, both parties were available for the hearing. Ms. Kimball of RD was representing RD and was present for the telephone conference. Mr. Barfield was available and represented himself. The parties were sworn.

Petitioner has been employed for more than one year, but his work is as a part-time contract worker and has only worked limited hours in the past year. Petitioner lives with his parents. He is now divorced and has custody of his minor child.

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 June 13, 1994, Petitioner and his ex-wife obtained a loan for the purchase of a primary home mortgage loan in the amount of \$33,570.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase their home on a property located in 16## 1* Street, Southport, FL 324##¹. RX-1, RX-2.
2. Borrowers re-amortized their account on May 13, 1999 bringing the principal amount due to \$38,796.35. Narrative.
3. The borrowers became in default and a Notice of Acceleration was mailed on April 25, 2000. RX-4.
4. The certified mail receipt was signed for by Petitioner's ex-wife. RD was not required to use "Addressee only" on certified mail. (RX-4). Petitioner testified that he did not actually receive notice of the default.
5. After constructive notice of the foreclosure in a paper of general circulation in the locality of the property, the property was sold in a foreclosure sale. A Judgment of Foreclosure was issued on May 1, 2001. RX-5.
6. RD received a net \$28,538.37 from the sale. Narrative, RX-6.

¹ The complete address is maintained in USDA files.

7. The principal loan balance for the RD loan prior to the foreclosure was \$38,644.59, plus \$5,463.17 for accrued interest, plus \$1,710.52 for fees. In addition, \$282.92 in additional interest was owned for a total of \$46,101.20. Narrative, RX-6.
8. After the sale proceeds were applied, borrowed owed \$17,562.83. Narrative, RX-6.
9. Since the sale, U.S. Treasury has received \$5,646.80 bringing the current amount due to \$11,916.03 - exclusive of potential Treasury fees. RX-6.
10. The remaining potential fees from Treasury are \$3,336.49. RX-7.
11. Mr. Barfield does not have full time employment and his employment is sporadic. PX-1.

Conclusions of Law

1. Petitioner is jointly and severally indebted to USDA Rural Development in the amount of \$11,916.03 exclusive of potential Treasury fees for the mortgage loan extended to him.
2. In addition, Petitioner is jointly and severally indebted for potential fees to the US Treasury in the amount of \$3,336.49.
3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.
4. The Respondent is **not** entitled to administratively garnish the wages of the Petitioner at this time.

Order

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After twelve months, RD may re-assess the Petitioner's financial position.

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

August 18, 2011

James P. Hurt
Hearing Official

Copies to: Danny Barfield
 Mary Kimball
 Dale Theurer

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