

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0342

In re: GREGORY HOLMES,

Petitioner

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the request of Gregory Holmes (“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 August 30, 2011, the parties were directed to provide information and documentation concerning the existence of the debt. In addition, the matter was set for a telephonic hearing to commence on September 29, 2011 and deadlines for filing documents with the Hearing Clerk’s Office were established.

The Respondent filed a Narrative, together with supporting documentation¹ on September 16, 2011. Petitioner did not file any submissions. The hearing commenced as scheduled. At the hearing, Petitioner represented himself and testified on his own behalf. Testimony was received from Mary E. Kimball, Accountant for the New Program Initiatives Branch of Rural Development, USDA Rural Development (“USDA RD”), located in Saint Louis, Missouri.

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

On the basis of the entire record before me, the following Findings of Fact and Conclusions of Law and Order shall be entered:

FINDINGS OF FACT

1. On February 15, 2000, the Petitioner assumed a loan from another borrower of the United States Department of Agriculture's RD in the amount of \$43,000.00 for the purchase of real property in Natchez, Mississippi, and signed an Assumption Agreement that recognized the loan. RX-1; RX-2.
2. Petitioner's account became delinquent, and on August 20, 2000, the delinquent balances were added to the principal of his loan, thereby reamortizing Petitioner's loan. RX 3.
3. Petitioner subsequently defaulted on the loan and Notice of Acceleration was issued by RD on March 24, 2001. RX 4.
4. A short sale was held on December 19, 2001 which yielded \$28,000.00, of which \$27,891.50 was applied against the balance of Petitioner's loan. RX 3.
5. At the time of the sale Petitioner owed \$52,180.30 on the account (\$48,583.12 for principal and \$3,245.21 in interest). RX 5.
6. After the proceeds from the sale and other credits were applied, Petitioner's account balance was \$23,999.99. RX 5; RX-6.
7. Petitioner was unwilling to settle the remaining debt with USDA-RD because he did not want to voluntarily agree to offset any income tax refunds that he might be due in the future.
8. A total of \$9,642.72 has been applied against the debt through offset since Petitioner's account was referred to the U.S. Department of Treasury ("Treasury"). RX 4.
9. Petitioner's debt is currently documented as \$14,357.27, plus potential fees of \$4,020.04 for a total of \$18,377.31. RX-6.

10. In July, 2011, Treasury, through its agent, issued a notice to Petitioner of intent to garnish his wages.

11. Petitioner timely requested a hearing, which was held by telephone on September 29, 2011.

12. After hearing an explanation for how the debt arose, Petitioner did not contest the validity of the debt.

13. Petitioner credibly testified that he is currently unemployed and has no income.

14. Petitioner has no expectation of improvement in his financial situation for the foreseeable future.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.

2. Petitioner is indebted to USDA RD in the amount of \$14,357.27, exclusive of potential Treasury fees for the loan he assumed to purchase real property.

3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met².

4. The Petitioner is under a financial hardship at this time.

5. The Respondent is entitled to administratively garnish the wages of the Petitioner when the financial hardship is anticipated to ease.

6. All wage garnishment actions shall be suspended for a period of at least one year.

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

ORDER

² Although Petitioner testified that he has not worked for some time, he also testified that he has occasionally worked since being laid off from his primary trade of oil driller. Accordingly, I am unable to determine whether he is entitled to the exclusion from garnishment set forth at 31 C.F.R. §285.11(j).

For the foregoing reasons, the wages of Petitioner shall **NOT** be subjected to administrative wage garnishment at this time. Treasury may re-evaluate Petitioner's financial capacity to withstand wage garnishment not less than one (1) year from the date of this Order.

Petitioner is advised that if he acquires the ability to negotiate a lump sum payment, he may be able to enter into a compromise settlement 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 its behalf, notice of any change in his address, phone numbers, or other means of contact.

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 September, 2011 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge