

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 11-0286

In re: Ratthan Jones
Petitioner

Decision and Order

This matter is before me upon the request of Ratthan Jones, 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 June 16, 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-6 on July 5, 2011. After the hearing and as a result of Mr. Jones's challenge of the procedural notice of the pending foreclosure on his property, RD filed an additional Narrative and exhibits RX-7 through RX-12 on September 8, 2011. On September 21, 2011, RD filed a third Narrative along with RX-13. The Petitioner filed his Narrative, and his financial statement on August 1, 2011 labeled as PX-1 thru PX-2. On September 14, 2011, he filed an additional Narrative and bi-weekly pay stub which I now re-label as PX-3.

On August 17, 2011 (Rescheduled from July 21, 2011 at Petition's request), at the time set for the hearing, both parties were available for the hearing. Gene Elkin, Esq. and Ms. Kimball represented RD. Mr. Jones was present and was represented by Robert Epperson, Esq. The parties were sworn.

Petitioner is divorced from co-debtor Sharon Davis Jones. Mr. Jones had entered into a Divorce Settlement Agreement which was incorporated in the divorce decree in which Mr. Jones transferred his interest and financial responsibility in the residence subject to the RD loan to Ms. Jones. Ms. Jones subsequently filed a Chapter 7 bankruptcy. Mr. Jones does not appear to be listed as a co-debtor on Schedule H, nor as a creditor holding an Executory contract. Mr. Jones through his counsel challenged the foreclosure notice procedures by RD, objected to the admissibility of RD's exhibit RX-13, and wanted a second oral hearing with the ability to call persons involved with the filing of RD documents as live witnesses. In my ruling filed on September 15, 2011, I denied his challenge of admissibility but allowed him until September 25, 2011 to "show the contrary" (5 USC 556(e)). Also in my September 15, 2011 ruling, I requested RD to respond to Mr. Jones's argument that he was not given proper notice of the pending foreclosure and/or acceleration of the debt. RD's exhibit RX-13 recites that the notice of foreclosure was filed in the *Baldwin Times* (a legal notice newspaper of general circulation) which stated the time, place, and terms of the foreclosure sale. RD's exhibit RX-7 is a signed Certified Mail receipt # 7-295-180-075 addressed to Mr. Jones on April 14, 2000 (four months before the foreclosure sale). RD states that the April 14, 2000 letter contained the standard Notice of Acceleration form to the debtors. I take Administrative Notice that this form is a repeated exhibit for all or nearly all of the 574

cases (and counting) filed by RD with the Office of Administrative Law Judges. RD contends that it only has to use reasonable efforts to give the debtors **actual** notice. In this instance, RD has produced documents keep in the ordinary course of business that tends to indicate that a certified letter was sent and received by Ratthan Jones. In any event, the legal notice in the *Baldwin Times* is satisfactory legal notice to the world that a foreclosure sale was to take place. RX-13. Lastly, Petitioner raised the issue of laches. I find RD's exhibit RX-9 through RX-12 as being persuasive that Petitioner's defense of laches must fail.

Petitioner has been employed for more than one year. Mr. Jones's bi-weekly pay stub indicates that he has less than full time employment. Mr. Jones raised the issue of financial hardship. I prepared a Financial Hardship Calculation using the information supplied by Petitioner. Using his bi-weekly payroll stub and his straight-time hourly pay rate, I re-calculated his gross bi-weekly income for 80 hours straight-time. I proportioned all taxes from the payroll stub as if he worked 80 hours without any overtime. I calculated Medicare at 1.45% of gross wages. I retained the same deductions for medical and dental insurance per pay-period. Ms. Jones has submitted a very modest monthly expense statement.

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 October 18, 1993, Petitioner obtained a loan for the purchase of a primary home mortgage loan in the amount of \$51,280.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development

(RD) to purchase their home on a property located in 1#### Candle***** Ct., Foley, AL 365##¹. RX-1, RX-2.

2. The borrowers re-amortized their account on April 18, 1998. Narrative.
3. The borrowers became in default and a Notice of Acceleration was mailed on/about April 14, 2000. RX-7.
4. A foreclosure sale was held on October 12, 2000. Narrative, RX-13.
5. RD received net \$39,438.00 from the foreclosure sale. Narrative, RX-4.
6. The principal loan balance for the RD loan prior to the foreclosure was \$53,628.56, plus \$5,464.62 for accrued interest, less \$546.51 escrow balance for a total due of \$58,546.67 RX-4.
7. The total amount due after the sale is \$19,108.67. RX-4.
8. Post sale activities increased the amount due to \$19,401.05. RX-4.
9. The U.S. Treasury has received \$8,546.95 and \$200.08 (pending transfer to RD) leaving a balance due of \$10,654.02. Narrative, RX-4, RX-5.
10. The remaining potential Treasury fees due are \$3,196.21. RX-5.
11. Mr. Jones states that he has been gainfully employed for more than one year. PX-3.
12. He lives with Mary F. Jones.
13. I performed a Financial Hardship calculation using the financial statements she provided².

Conclusions of Law

¹ The complete address is maintained in USDA files.

² The Financial Hardship calculation is not posted on the OALJ website.

1. Petitioner is indebted to USDA Rural Development in the amount of \$10,654.02 exclusive of potential Treasury fees for the mortgage loan extended to him.
2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$3,196.21.
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 one year, 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.

October 3, 2011

James P. Hurt
Hearing Official

Copies to: Ratthan Jones
Robert Epperson
Mary Kimball
Dale Theurer

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