

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0374

In re: CAMERON SIMS,

Petitioner

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the request of Cameron Sims (“Petitioner”) for a hearing to address the existence or amount of a debt alleged to be due to the U.S. Department of Agriculture, Rural Development (“USDA-RD”; “Respondent”), and if established, the propriety of imposing administrative wage garnishment. By Order issued on September 22, 2011, the parties were directed to provide information and documentation. In addition, the matter was set for a hearing to commence by telephone on October 18, 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 8, 2011 and Petitioner filed a Consumer Debtor Financial Statement² on October 11, 2011. The hearing was held as scheduled. At the hearing, Petitioner represented himself and testified, and testimony was received from Respondent’s representative, Mary E. Kimball, Accountant for the New Program Initiatives Branch of USDA-RD, 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 and Conclusions of Law and Order will be entered:

FINDINGS OF FACT

1. On April 26, 2007, the Petitioner received a home mortgage loan in the amount of \$81,200.00 from J.P. Morgan Chase Bank for residential property located in Cambria, Wisconsin. RX 1.
2. Before executing the promissory note for the loan, on March 13, 2007, Petitioner requested a Single Family Housing Loan Guarantee from the USDA-RD, which was granted. RX-2.
3. By executing the guarantee request, Petitioner certified that he would reimburse USDA RD for the amount of any loss claim on the loan paid to the lender or its assigns. RX-2.
4. After falling ill with cancer, Petitioner defaulted on the loan on February 1, 2008, when the balance due was \$80, 470.71. RX-3.
5. On May 14, 2010, a foreclosure sale yielded \$30,000.00. RX-5, RX-6, RX-7.
6. Lender's loss claim of \$63,923.55, representing principal, accrued interest, protective advances, attorney fees, appraisal and property inspection fees, and lender closing costs, was paid by USDA RD on July 14, 2010. RX-3.
7. USDA RD entered the amount of the loss claim that it paid as a debt due from Petitioner, but offered to settle the debt with Petitioner. PX-1; RX 8; RX 10; RX-11; RX-12
8. Settlement of the debt was approved, but unfortunately left Petitioner with only a few days to make a substantial lump sum payment pursuant to the settlement. (Petitioner's testimony).

9. Because of the delay in approving the settlement, and the lack of time for Petitioner to secure a lump sum down payment, the unpaid account in the amount of \$63,923.55 was referred to the U.S. Department of the Treasury (“Treasury”) for collection as required by law³. RX 9.
10. Treasury’s potential fees amount to \$17,898.60, for a total potential indebtedness of \$81,822.15. RX-9.
11. Treasury, through its agent, issued a notice to Petitioner of intent to garnish his wages, and Petitioner timely filed a petition for a hearing, which was held on October 18, 2011.
12. Petitioner does not currently contest the validity of the debt, but understandably felt that the offer to compromise the debt should have been effected.
13. Petitioner further contends that wage garnishment against his salary would represent a substantial financial hardship.
14. Petitioner lives with his two dependent children and his spouse, who is currently employed.
15. Petitioner expressed willingness to attempt to resolve the debt.
16. Even allowing for Petitioner’s wife’s wages, 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 RD in the amount of \$63,923.55 exclusive of potential Treasury fees for the mortgage loan extended to him.

³ The Debt Collection Improvement Act of 1986 requires agencies and departments of the United States to refer to Treasury any debt that has remained uncollected for a period of time. 31 C.F.R. Chapter II.

3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.
4. The Petitioner shall be provided approximately three months to attempt to negotiate a settlement of the debt with Treasury.
5. The Respondent is entitled to administratively garnish the wages of the Petitioner beginning January 18, 2012; 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 January 18, 2012, 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.

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 October, 2011 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge