

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0392

In re: TRACEY JOHNSON,
Petitioner

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the request of Tracey Johnson (“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 September 19, 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 October 17, 2011 and deadlines for filing documents with the Hearing Clerk’s Office were established.

On October 4, 2011, U.S. Department of Agriculture Rural Development (“Respondent”; “USDA-RD”) filed a Narrative, together with supporting documentation¹ and Petitioner filed a Consumer Debtor Financial Statement. The hearing commenced as scheduled. At the hearing, Petitioner represented herself and testified on her own behalf. Testimony was received from Mary E. Kimball, Accountant for the New Program Initiatives Branch of Rural Development, USDA RD, located in Saint Louis, Missouri.

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

¹ References to Respondent’s exhibits herein shall be denoted as “RX-1 through RX-6”.

FINDINGS OF FACT

1. On August 17, 2004 the Petitioner assumed an existing loan from the USDA RD in the amount of \$39,000.00 for the purchase of real property in Hazlehurst, Missouri evidenced by an Assumption Agreement. RX-1.
2. USDA-RD established an account for Petitioner's debt. RX-2.
3. On January 7, 2005 and again on April 7, 2006, Petitioner reamortized the account to include delinquent amounts in her principal, for an outstanding principal balance of \$34,284.90. RX 3.
4. Petitioner subsequently defaulted on the loan and Notice of Acceleration was issued by RD on January 16, 2009. RX 4.
5. A short sale of the real property was held on March 29, 2010 and yielded \$12,000.00, which was applied against Petitioner's account balance of \$36,213.83, consisting of \$30,872.73 principal, \$4,564.12 interest, \$478.89 fees, and \$28.09 interest on fees. RX 5.
6. The balance of Petitioner's account of \$24,218.83 plus potential fees of \$6,779.87 for a total indebtedness of \$30,993.70 is at Treasury for collection. RX 6.
7. Treasury, through its agent, issued a notice to Petitioner of intent to garnish her wages, and Petitioner timely requested a hearing, which was held by telephone on October 17, 2011.
8. After hearing an explanation for how the debt arose, Petitioner did not contest the validity of the debt.
9. Petitioner credibly testified that she is currently employed and earns [REDACTED] per hour, but does not always work a full week of forty hours.
10. Petitioner lives with her two minor children for whom she is financially responsible.
11. Petitioner's monthly expenses exceed or meet her monthly income

12. Petitioner has no expectation of improvement in her 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 \$24,213.83, exclusive of potential Treasury fees for a loan to purchase real property.
3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.
4. Petitioner's wages are excluded from garnishment, pursuant to 5 U.S.C. § 1673(a)(2).
5. Respondent is not entitled to administratively garnish the wages of the Petitioner.
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.

Petitioner is advised that if she acquires the ability to negotiate a lump sum payment, she may be able to enter into a compromise settlement of the debt with the representatives of Treasury. In addition, Petitioner may inquire about whether her circumstances meet Treasury's criteria for a hardship resolution of the debt. 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 her 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