

**UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE**

Docket No. 12-0195

In re: SHERMAN A. CAREY,
Petitioner

Final Decision and Order

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the request of Sherman Carey (“Petitioner”) for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Treasury (“Treasury”) through the United States Department of Agriculture, Rural Development Agency (“Respondent”; “USDA-RD”), and if established, the propriety of imposing administrative wage garnishment. By Order issued on *, 2012, the parties were directed to submit and exchange information and documentation concerning the existence of the debt. In addition, the matter was set for a telephonic hearing to commence on March 6, 2012 and deadlines for filing documents with the Hearing Clerk’s Office were established. The Respondent filed a Narrative, together with supporting documentation on February 17, 2012. (RX-1 through RX-4). On February 24, 2012, Petitioner filed a Consumer Debtor Financial Statement. (PX-1).

I conducted a telephone hearing on March 6, 2012. Respondent was represented by Michelle Tanner who testified on behalf of the RD agency. Petitioner, acting as his own representative, testified. Petitioner acknowledged receipt of Respondent’s narrative and exhibits, and Respondent had received Petitioner’s submission, PX-1.

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 23, 1995, Petitioner together with his wife assumed the obligation for an existing loan from USDA-RD in the amount of \$46,508.40. Petitioner also obtained a direct loan from USDA-RD in the amount of \$28,390.00 to complete the purchase of real property in Shady Point, OK, evidenced by an executed promissory note. RX-1.

2. On January 30, 1997, the loan was accelerated due to Petitioner's default, and foreclosure action ended with the property reverting to USDA-RD at the cost of \$48,490.73. RX-2.

3. At the time of the foreclosure sale, the amount due on the loan account, including principal, interest, fees and protective advances was \$81,759.73. RX-2.

4. The amount due on the account after application of the difference between the loan balance and the proceeds from the sale was \$33,268.97, which was established as a debt on Petitioner's account, and referred to the Department of Treasury ("Treasury") for collection, as required by law. RX-2; RX-3.

5. The account has been substantially reduced through payments from Petitioner and as of March 6, 2012, remains at \$14,559.58, plus potential fees due to Treasury for debt collection. RX-4; testimony of Michelle Tanner.

6. Petitioner credibly testified that he had entered into an agreement to pay a compromise of the debt through payments that he made through 2005, and he understood that his liability had been satisfied.

7. Petitioner believed that he could obtain some documentation of his agreement, and

would contact Treasury regarding his understanding that the liability had been satisfied.

8. Petitioner's income and expenses support the continuation of wage garnishment without substantial hardship. PX-1.

9. In determining whether wage garnishment would constitute a hardship, I considered Petitioner's sworn testimony, his financial statement (PX-1), and Treasury Standard Form SF 329C (Wage Garnishment Worksheet).

Conclusions of Law

1. Petitioner is indebted to USDA's Rural Development program in the amount of \$14,559.48, exclusive of potential fees due to Treasury.

2. All procedural requirements for administrative wage garnishment set forth in 31 C.F.R. §285.11 have been met.

3. Petitioner's request for a hearing regarding wage garnishment was not timely filed, and therefore, all amounts acquired through wage garnishment through the date of this Decision and Order shall remain applied against his account.

4. Wage garnishment at the legally permissible amount would not constitute a hardship.

5. USDA-RD may administratively garnish Petitioner's wages in the amount of 15% percent of his monthly disposable income, but not until the expiration of ninety (90) days suspension on collection.

6. Although garnishment is legally appropriate, garnishment shall be suspended for a period of ninety (90) days, beginning with the date of this Decision and Order, to allow Petitioner to provide Treasury with evidence of his agreement and understanding that the debt had been satisfied in 2005.

7. In the event that Treasury is unwilling or unable to accept Petitioner's position regarding the satisfaction of his debt, Petitioner is advised that if he acquires the ability to negotiate a lump sum payment, he may be able to enter into a separate compromise settlement of the debt with the representatives of Treasury.

8. Petitioner is further advised that such an agreement may lower anticipated fees for collecting the debt. In addition, Petitioner may inquire about whether he may enter into an arrangement to make installment payments to Treasury in lieu of garnishment.

9. The toll free number for Treasury's agent is **1-888-826-3127**.

10. Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner, including income tax refunds.

11. 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.

Order

1. Administrative wage garnishment is hereby suspended for a period of ninety (90) days from the date of this Decision and Order.

2. Upon the conclusion of the ninety (90) day suspension period, wage garnishment may proceed at the rate of 15.0% of Petitioner's monthly disposable income, unless Petitioner is successful in showing satisfaction of the debt or entering a new settlement agreement with Treasury.

3. Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf at Treasury, 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 by the Hearing Clerk's Office.

So Ordered this _____ day of March, 2012 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge