

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

Docket No. 12-0149

In re: WILLIAM WEST,
Petitioner

Final Decision and Order

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the request of William West (“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 January 25, 2012, deadlines were established for the filing and exchange of evidence and the matter was set for a telephonic hearing to commence on March 13, 2012.

Petitioner’s counsel, Anne Odam, entered an appearance on behalf of Mr. West. Respondent filed a Narrative, together with supporting documentation, and Petitioner filed a Consumer Debtor Financial Statement, together with supporting documentation.

I conducted a telephone hearing on March 13, 2012. Respondent was represented by Michelle Tanner, who testified on behalf of the RD agency. Petitioner was represented by his counsel, and he testified. The parties’ submissions were admitted to the record.

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 March 24, 1986, Petitioner together with his wife Lisa West, assumed the obligation for an existing loan from USDA-RD in the amount of \$36,165.16 for the purchase of real property in Amory, MS, evidenced by the Assumption Agreement. RX-1.

2. On May 28, 1992, pursuant to a divorce settlement, Petitioner deeded his rights to the encumbered property to Lisa West, who agreed to assume the obligations for the payment of the loan to USDA-RD, by deed recorded on July 9, 1993 at the County of Monroe, State of Mississippi. PX-2.

3. Petitioner and Lisa West made application to USDA-RD for reaffirmation and assumption of the real estate obligation by Lisa West.

4. Petitioner made inquiries about the approval of the application and believed that USDA-RD approved the assumption by Lisa West.

5. Petitioner received no further notice regarding the loan until a foreclosure action was initiated.

6. The loan was accelerated on May 21, 2002, and foreclosure was initiated. RX-2.

7. The property was sold before foreclosure was completed on April 20, 2006 for \$25,000.00. RX-4.

8. At the time of the sale, the amount due on the loan account, including principal, interest, fees and protective advances was \$24,053.17. RX-3.

9. A refund of \$18.30 was applied to the account, leaving an amount due on the account of \$24,034.57. RX-3.

10. On April 27, 2006, a debt settlement was processed. RX-3.

11. Petitioner was not included in the debt settlement process.

12. On July 5, 2006, the debt in the amount of \$24,034.57 was forwarded to Treasury for collection pursuant to law. RX-3.

13. \$4,262.33 was collected by Treasury and applied to the account, which now amounts to \$19,772.54 plus potential collection fees of \$5,536.31 for a total potential debt of \$25,308.85. RX-5.

Conclusions of Law

1. I fully credit Petitioner's testimony regarding his attempts to resolve the debt, as such testimony was supported by the assertions of his counsel, who represented him throughout his divorce and the subsequent property distribution.

2. USDA-RD's failure to fully provide due process to Petitioner regarding his status viz-a-viz his ex-wife's assumption of the debt, combined with Petitioner's due diligence to confirm his release from liability, casts a cloud on USDA-RD's entitlement to continue to collect the debt from Petitioner.

3. Petitioner is NOT indebted to USDA's Rural Development program for the deficiency on his real estate loan due to equitable estoppel.

4. All procedural requirements for debt collection were not met by USDA-RD, and due to failure to properly give notice to Petitioner of the status of the assumption of the debt by his ex-wife, and the potential of relief through USDA-RD's debt settlement program, USDA-RD has failed to establish the validity of the debt.

5. USDA-RD may NOT administratively garnish Petitioner's wages

6. Petitioner should NOT be obligated for this debt.

7. The amounts collected from Petitioner shall not be refunded to him, but rather, Petitioner retains the right to pursue collection for those amounts from Lisa West, who assumed liability for the debt.

Order

1. Administrative wage garnishment is NOT warranted as the validity of the debt has not been established.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

So Ordered this 16th day of March, 2012 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge