

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

Docket No. 12-0228

In re: NIKI ATHERTON,
Petitioner

Final Decision and Order

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the February 7, 2012 petition of Niki Atherton (“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 February 29, 2012, the parties were directed to submit and exchange information and documentation concerning the existence of the debt and the matter was set for a telephonic hearing. Respondent filed a Narrative, together with supporting documentation on February 27, 2012. (RX-1 through RX-4). Petitioner did not file a Consumer Debtor Financial Statement or other submission.

Following Petitioner’s request for a brief continuance, I conducted a telephone hearing on March 20, 2012. Respondent was represented by Michelle Tanner who testified on behalf of the RD agency. Petitioner, acting as her own representative, testified. Petitioner acknowledged receipt of Respondent’s narrative and exhibits.

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 27, 2000, Petitioner obtained a direct loan from USDA-RD in the amount of \$61,747.00 for the purchase of real property in Ferris, TX, as evidenced by an executed promissory note. RX-1.

2. On May 27, 2009, the loan was accelerated due to monetary default, and foreclosure action ended with the property reverting to USDA-RD upon foreclosure sale on September 7, 2010 at the cost of \$36,300.00. RX-2; RX-4.

3. At the time of the foreclosure sale, the amount due on Petitioner's loan account, including principal, interest, fees and protective advances was \$89,909.50. RX-3.

4. The amount due on the account after credits for the proceeds from the sale and other credits was \$53,725.23. RX-6.

5. USDA-RD sent an offer to compromise the debt to Petitioner, but Petitioner did not receive the documents in the mail. RX-5.

6. The balance on the account was established as a debt and referred to the Department of Treasury ("Treasury") for collection, as required by law on June 5, 2011. RX-6.

7. Petitioner credibly testified regarding her current financial condition and her support of three minor children.

8. In determining whether wage garnishment would constitute a hardship, I considered Petitioner's sworn testimony 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

\$53,725.23, exclusive of potential fees due to Treasury amounting to \$15,043.06.

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 timely filed.

4. Wage garnishment would constitute a hardship to Petitioner.

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

6. Petitioner is advised that if she acquires the ability to negotiate a lump sum payment, she may be able to enter into a separate compromise settlement of the debt with the representatives of Treasury.

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

8. Pursuant to prevailing law, USDA-RD has no authority to compromise a debt which has been referred to Treasury for collection.

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 would constitute a hardship and may NOT be

undertaken.

2. Treasury may continue to collect the debt through offset of any funds due to Petitioner from the United States.

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 her 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 22nd day of March, 2012 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge