

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 12-0286

In re: Brian Fisher
Petitioner

Decision and Order

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On April 10, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-10 on April 3, 2012. Mr. Fisher filed his Financial Statement on April 26, 2012 which I now label as PX-1. On May 1, 2012, at the time set for the hearing, both parties were available. Ms. Michelle Tanner represented RD. Mr. Fisher was self-represented. The parties were sworn.

Following the hearing,

Petitioner has been employed for less than one year.

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 6, 2006, Petitioner obtained a loan for the purchase of a primary home mortgage loan in the amount of \$199,920.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase a home on a property located in Joshua Tree, California. RX-2.
2. Prior to signing the loan, the borrower signed RD form 1980-21 (Loan Guarantee). RX- 1 @ p. 2 of 2.
3. The Borrower became delinquent. The loan was accelerated for foreclosure and the notice of a judicial sale was advertised on/about January 10, 2011. Narrative, RX-3 @ p. 1 of 2.
4. At the foreclosure sale of January 10, 2011, the property was purchased by a JP Morgan Chase Bank for \$54,400.00. Narrative, RX-3 @ p. 2 of 2.
5. The property was subsequently appraised on August 16, 2010 for \$53,000.00 “AS IS.” RX-4 @ p. 5 of 7, RX 5 @ p. 1 of 6.
6. The property was sold on February 2, 2011 for \$51,500.00. RX-5 @ p. 2 of 6, 4 of 6.
7. The borrower owed \$192,970.94 for principal, plus \$14,780.44 for interest, plus \$1,647.90 for protective advancements, plus \$22.64 for interest on protective advance for a total of \$209,421.92 to pay off the RD loan. Narrative, RX-7.

8. In addition, under the loan guarantee program, borrower owes an additional \$7,617.74 for fees and expenses for a grand total of \$217,039.66. RX-7.
9. USDA RD paid JP Morgan Chase \$151,047.01 for their loss under the loan guarantee program. Narrative, RX-7.
10. Treasury has received \$4,578.00 toward the debt. RX-10 @ p. 3 of 5.
11. The remaining amount due of \$146,486.01 was transferred to Treasury for collection on April, 17, 2012. Narrative, RX-10 @ p. 4 of 5.
12. The potential Treasury collection fees are \$41,016.08. Narrative, RX-10 @ p. 4 of 5..
13. Mr. Fisher has been employed for less than one year.
14. Mr. Fisher stated that his wife received a IRS form 1099-C from the lender. RD stated that the 1099-C was not issued at RD's request.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of \$146,486.01 exclusive of potential Treasury fees for the mortgage loan extended to him and under the loan guarantee program.
2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$41,016.08.
3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.
4. The Respondent is not entitled to administratively garnish the wages of the Petitioner at this time.

Order

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After four months, RD may re-assess the Petitioner's financial position.

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

May 2, 2012

James P. Hurt
Hearing Official

Copies to: Brian Fisher
Michelle Tanner
Dale Theurer

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