

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0506

In re: VICTOR ALVAREZ,
Petitioner

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the timely request of Victor Alvarez (“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 August 2, 2012, 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 September 5, 2012.

The Respondent USDA-RD filed a Narrative, together with supporting documentation¹ on July 24, 2012 and Petitioner filed a Consumer Debtor Financial Statement² on August 15, 2012. On that date, Respondent filed an amended Narrative and document. The hearing commenced as scheduled, with Petitioner representing himself. Respondent was represented by Giovanna Leopardi, Appeals Coordinator for USDA. Both representatives testified and I admitted their evidence 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:

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

² This exhibit has been identified, and shall be referred to herein as, “PX-1”.

FINDINGS OF FACT

1. On March 21, 2005, Petitioner and his wife obtained a home mortgage loan in the amount of \$67,346.00 from Major Mortgage to purchase residential property located in Lexington, Maine. RX-2.
2. Before executing the promissory note for the loan, on February 4, 2005, Petitioner and his wife requested a Single Family Housing Loan Guarantee from the United States Department of Agriculture (USDA), Rural Development (RD), which was granted. RX-1.
3. By executing the guarantee request, Petitioner certified that he would reimburse USDA for the amount of any loss claim on the loan paid to the lender or its assigns.
4. The loan guarantee included a “guaranty fee” of \$1,346.00, which U.S. Bank included as part of the principal due on the loan. RX-1.
5. The loan was assigned to U.S. Bank, N.A.
6. The Petitioner subsequently defaulted on the loan and it was accelerated for foreclosure.
7. A foreclosure sale was held on February 24, 2010 and U.S. Bank acquired the property for \$48,450.00. RX-3.
8. On April 21, 2011, the property was sold for \$28,000.00. RX-5.
9. At the time of the foreclosure, the total amount due on the loan was \$72,687.31, representing principal, accrued interest, protective advances, attorney fees, appraisal and property inspection fees, and lender closing costs. RX-6; RX-7.
10. USDA paid U.S. Bank a loss claim in the amount of \$40,603.64. RX-6; RX-7.
11. USDA sent offers of debt settlement but received no response from Petitioner or his wife. RX-8.

12. USDA-RD entered the amount of the loss claim that it paid as a debt due from Petitioner and his wife and referred the debt to the United States Department of Treasury (“Treasury”) for collection. RX 9.
13. Treasury offsets were applied against the loan and the balance stands at \$36,129.13 exclusive of Treasury fees. RX-10.
14. Treasury, through its agent, issued a notice to Petitioner of intent to garnish his wages.
15. Petitioner timely requested a hearing, which was held on September 5, 2012.
16. Petitioner does not contest the validity of the debt, but contends that the wage garnishment effected against his salary represented a substantial financial hardship.
17. The Petitioner’s spouse is not currently employed, but anticipates returning to work when her infant is older.
18. The family income exceeds the family monthly expenses, except that some of the expenses do not fall within the definition of “necessary” for purposes of calculating ability to withstand wage garnishment.
19. Petitioner’s wages are currently subject to garnishment for repayment of debts to creditors that have been reduced to judgment, but his income should withstand garnishment upon his wife’s return to work.
20. Even allowing for Petitioner’s wife’s return to work, the family income will not withstand garnishment at the level of legal limits; however, Petitioner should be able to absorb garnishment at a percentage lower than the maximum.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.

2. The initial Lender imposed a fee as principal on the loan that was not authorized under regulation or part of the loan agreement between USDA-RD and Lender.
3. There is no consideration for Petitioner paying a fee for guaranteeing the loan, which benefited the Lender by assuring the United States would indemnify losses.
4. Petitioner is entitled to a credit for the fee, plus the interest that had accrued through amortization for the period when the loan was made in March, 2005 until the foreclosure in April, 2005.
5. A credit should be applied to Petitioner's account in the amount of \$1,758.36, which consists of the fee of \$1,346.00 plus accrued, amortized interest in the amount of \$412.36 (calculated on the loan interest rate of 5.09% X 30 years= 6.76 per month X 61 months).
6. Petitioner is indebted to USDA Rural Development in the amount of \$34,370.77 (\$36,129.13 (-) 1,758.36) exclusive of potential Treasury fees.
7. USDA-RD may have a cause of action against the Lender Major Mortgage to recover the loss payment for the unauthorized fee and interest.
8. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.
9. The Petitioner is under a temporary financial hardship.
10. The Respondent is entitled to administratively garnish the wages of the Petitioner when the financial hardship is anticipated to ease within six months time; however Respondent shall not be entitled to garnish more than 5% of Petitioner's wage.
11. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

USDA-RD shall recall the loan from Treasury in order to make an adjustment to credit Petitioner's account in the amount of \$1,758.36, for an illicit fee that was included in the principal, and the accrued interest on that fee amount.

For the foregoing reasons, the wages of Petitioner shall **NOT** be subjected to administrative wage garnishment at this time. As of April 1, 2013, garnishment up to 5% of Petitioner's disposable pay is authorized. 31 C.F.R. §285.11.

Petitioner is encouraged in the interim to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is further encouraged to consult legal advice regarding the reduction of his indebtedness to all of his creditors.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Until the debt is satisfied, Petitioner shall give to USDA RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact.

Petitioner is also advised that so long as a debt remains unsatisfied, he is ineligible for other loans or benefits administered by the federal government.

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

So Ordered this 6th day of August, 2012 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge