

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0015

In re: Joseph Burton,
Petitioner.

Decision and Order

This matter is before the Office of Administrative Law Judges upon the October 11, 2012 request of Joseph Burton (“Petitioner”) for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development (“USDA-RD”), and if established, the propriety of administrative wage garnishment.

By Order issued October 15, 2012 the parties were directed to exchange information and documentation and the matter was set for a telephonic hearing. Petitioner did not submit any documentation. USDA-RD filed a Narrative, together with supporting documentation.

On the scheduled date for the hearing, November 27, 2012, USDA-RD’s representative, Giovanni Leopardi, appeared and testified. I admitted USDA-RD’s evidence, RX-1 through RX-6 to the record. Petitioner also appeared and testified.

The following Findings of Fact, Conclusions of Law, and Order is based upon the entire record.

FINDINGS OF FACT

1. On May 29, 1987, the Petitioner¹ received a loan in the amount of \$42,400.00 from USDA-RD for the purchase of real property located in Hitchcock, Texas, evidenced by Promissory Note and Real Estate Deed. RX-1.

¹Petitioner’s ex-wife also signed the note.

2. Petitioner and his ex-wife divorced, and he conveyed the property to her as part of the divorce proceedings; Petitioners' ex-wife occupied the house after the divorce.
3. Subsequently, the loan fell into default and was accelerated on December 23, 2002. RX-2.
4. A foreclosure sale was held on March 2, 2004 and the property was sold to the highest bidder for the amount of \$49,000.00. RX-4.
5. At the time of the sale, the amount due on Petitioner's loan was \$66,490.82, comprised of principal, interest, fees, and costs related to the foreclosure and sale. RX-5.
6. USDA-RD applied the proceeds of the sale to the Petitioner's account and a balance of \$17,490.82 remained due. RX-5.
7. Petitioner filed an untimely response to USDA-RD's attempts to settle this outstanding amount due, which was received on December 6, 2006 after the debt had been referred to the United States Department of Treasury ("Treasury"). RX-4.
8. USDA-RD referred Petitioner's account to Treasury for collection on June 7, 2004, pursuant to applicable law. RX-3.
9. Offsets and collections by Treasury have reduced the debt by \$16,780.78. RX-5.
10. At the time of the submission of USDA-RD's exhibits, the amount of Petitioner's account at Treasury was \$1,088.04, plus remaining potential fees.
11. Additional amounts have been applied to the account due to ongoing wage garnishments.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. Respondent USDA-RD has established the existence of a valid debt from Petitioner to USDA-RD.
3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

4. Petitioner's request for a hearing on wage garnishment was not timely filed, and therefore his wages have been garnished.
5. Upon consideration of all of the evidence, I find that USDA-RD/Treasury may administratively garnish Petitioner's wages; however Petitioner's income and expenses cannot sustain the maximum rate of 15% of his disposable income.
6. Petitioner is advised that only Treasury has authority to compromise the amount of the debt, and that he may be able to negotiate settlement of the debt with the representatives of Treasury.
7. In order to allow Petitioner to consider negotiations with Treasury, garnishment shall be suspended for a period of sixty (60) days.
8. At the expiration of the sixty (60) days suspension, garnishment of Petitioner's wages may be imposed at a rate of not more than 5% of his disposable income.
9. Petitioner is encouraged to contact Treasury's agent is **1-888-826-3127** if Petitioner is in the position to negotiate the debt.
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 sixty (60) days.
2. At the expiration of the sixty (60) day suspension period, Petitioner's wages may be garnished at the rate of no more than 5% of Petitioner's disposable income.

3. Treasury may continue to collect the debt through offset of any funds due to Petitioner from the United States.
4. 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.
5. Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

So Ordered this 28th day of November, 2012 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge