

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re: Kenneth Perkins:

AWG Docket No. 13 – 0045

Final Decision and Order

This matter is before me upon the request of the Petitioner, Kenneth Perkins, for a hearing in response to the efforts of Respondent to institute a federal administrative wage garnishment against him. On November 16, 2012, I issued a prehearing order requiring the parties to exchange information concerning the amount of debt.

In his prior case, AWG Docket No. 10 – 0303, Mr. Perkins appealed as to account number 0016837224. An order regarding that case was issued by me on or about March 29, 2011 not permitting the garnishment of Mr. Perkins wages as a result of a Financial Hardship Calculation. This appeal concerns account number 0004515671. I conducted a telephone hearing on January 9, 2013. Both parties were present. Mr. Perkins was self-represented. Ms. Giovanna Leopardi represented RD. The parties were sworn. Mr. Perkins acknowledged receiving RD's narrative and exhibits RX-1 through RX-5. In addition, RD submitted an additional document on January 8, 2013 which I now mark as RX-6. Mr. Perkins has been working for more than one year. He is already being garnished via the TOP (Tax offset program) as a result of the final Decision and Order dated March 29, 2011. In this petition, Mr. Perkins challenged the application of prior IRS intercepts. Following the instant hearing, Mr. Perkins was to fax to Ms. Leopardi any IRS intercepts he contended were inappropriately applied. Ms. Leopardi was to match or trace those intercepts to see if they were properly applied. There have been no additional filings from Mr. Perkins since the date of the hearing.

Findings of Fact

1. On November 25, 1997, Petitioner Kenneth Perkins and Abigail (his wife) obtained a USDA FMHA home mortgage loan for a property in Compton, Kentucky. Petitioner was a signor to the Assumption agreement for \$32,376.81 (account number 4515671). RX-1.
2. The borrowers defaulted on the loans. A foreclosure sale was held in January 13, 2003. (See exhibit RX – 7 in the prior case AWG 10 – 0303).
3. On December 6, 2000, the borrowers were given notice of an acceleration of the debt. RX 6.
4. Prior to the sale, the borrowers owed \$32,002.04 on account number 4515671. In addition, the borrowers owed \$10,818.80 for interest and \$4737.47 for a fee balance on the same account for a total of \$47,558.31.
5. After the application of a portion of the foreclosure sales proceeds, Mr. Perkins now owes \$18,786.84 on account number 4515671. RX-at page 1 of 3.

6. Mr. Perkins is jointly and severally liable on the debt under the terms of the promissory note.
7. Mr. Perkins stated that he has been gainfully employed for more than one year.

Conclusions of law

1. Petitioner Kenneth Perkins is jointly and severally indebted to USDA's Rural Development program in the amount of \$18,786.84 on account number 4515671.
2. In addition, Mr. Perkins is jointly and severally liable for \$3070.95 as remaining potential collection fees to the US treasury. RX-5 at page 7 of 8.
3. All procedural requirements for administrative wage garnishment set forth in 31 CFR § 285.11 have been met.
4. Petitioner is under a duty to inform USDA Rural Development of his current address, employment circumstances, and living expenses.
5. The findings of fact in paragraphs 1 through 10 (erroneously numbered as 16) found in the prior Decision and Order dated March 29, 2011 are res judicata as to this debt.
6. Any wage garnishments determined by Rural Development or Treasury after consideration of the facts and circumstances of Mr. Perkins's income expenses shall proceed firstly against account number 16837224 until it is satisfied.

Conclusions of Law

1. The requirements of 31 CFR § 288.11 (i) & (j) have been met.
2. Rural Development may assess the debtor's financial position and modify the garnishment percentage as circumstances dictate.
3. Copies of this Decision and Order shall be served upon the parties by the hearing clerk's office.
January 25, 2013.

James P. Hurt
Hearing Officer

Kenneth Perkins
Giovanna Leopardi
Dale Thurer.