

United States Department Of Agriculture
Before The Secretary Of Agriculture

Docket No. 13 – 0089

In re: John F. Fullington, II
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 the imposition of administrative wage garnishment.

On April 15, 2013, a prehearing order was entered 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 on May 7, 2013.

RD filed its Narrative and exhibits RX-1 thru RX -13 on April 24, 2013. Upon preliminary review of the documentation, I requested that the Farm Service Agency (FSA) provide a copy of the trustee's deed for Onondaga County, New York and a summary of the remaining balances. FSA filed exhibits RX-11-A (a) –(f) and RX-14 on May 16, 2013. A copy was mailed to Petitioner.

At the time and place of the initial hearing date, FSA was present. Phone calls placed to the phone number provided by Petitioner on his Request for Hearing were not answered.

Richard Cardona and Mary Durkin represented FSA. No testimony was taken however the written documentation provided by FSA remains unchallenged.

No financial statements have been received from the Petitioner. Following the hearing and upon further review of FSA's documentation, I requested a further explanation of the extinguishment of loans 44-01 and 44-02 – the response by FSA is now part of the record.

On the basis of the record before me the following facts and conclusions of law and order will be entered.

Findings of Fact

1. Petitioner John F. Fullington, II and his sister, Shannon L. Fullington, Beverly C. Fullington and John F. Fullington obtained three loans related to their Dairy farming operation in Onondaga County, New York by borrowing money from the Farm Service Agency on August 3, 2007 in the amount of \$22,740 (Loan No. 44-03) ; and \$174,792.94 (Loan No. 44-04); and \$7,497.12 (Loan No. 44-05) . RX-5, RX-4, and RX-2, respectively.
2. The real property of Beverly C. Fullington and John F. Fullington, which was in the same New York county from where the Dairy farming operation was conducted, already had a superior lien in favor of Citimortgage bank.
3. The three surviving FSA loans (44-03, 44-04, and 44-05) were junior to the Citimortgage loan on the Beverly and John Fullington property and also secured by personal property chattels related the farming operation of Petitioner and his sister, Shannon L. Fullington.
4. A series of operational tragedies befell the Dairy farming operation and farming income was greatly reduced.
5. The farming operation subsequently moved to Montgomery County, New York prior to the foreclosure.
6. The primary loan became in default and the Citimortgage loan was accelerated for foreclosure on May 8, 2008. RX-14.
7. The FSA loans were accelerated on September 20, 2010. RX-6.
8. The assets of the farming operation were liquated, but the proceeds were not sufficient to pay the FSA loans in full. RX-11-A.
9. The delinquent accounts were referred to Treasury for Cross-servicing on February 7, 2011. RX-8.
10. Treasury has collected payments through cross-servicing on the FSA loans. RX-11-A @p. 1 of 15.
11. The balance due on loans 44-03, 44-04, and 44-05 remain as \$18,795.94, \$210,781.91, and \$527.54, respectively, for a total of \$230,105.39 . RX-11-A @ p. 1 of 15.
12. In addition, Petitioner is jointly and severally liable for potential treasury collection fees.

Conclusions of Law

1. Petitioner is jointly and severally liable to the USDA Rural Development in the amount of \$230,105.39 for the FSA loans extended to him.
2. In addition, Petitioner is jointly and severally liable for potential collection fees to the U.S. Treasury.
3. All Procedural Requirements for Administrative Wage Offset Set Forth in 31 CFR Paragraph 285.11 Have Been Met.
4. Petitioner has not requested a financial hardship determination. Rural Development may garnish Petitioner's wages in the amount allowed by law.

Order

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment as might be specified in 31 CFR § 285.11 (i).

A Copy of this Decision and Order shall be served upon the parties by the hearing clerk's office.

May 29, 2013

James P Hurt
Hearing Officer

Copies to:
John F. Fullington, II
Richard Cardona & Mary Durkin
Dale Theurer