

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 10-0089

In re: MARK BIRCHER,

Petitioner

DECISION AND ORDER

This matter is before the Administrative Law Judge upon the request of the Petitioner, Mark Bircher, 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 February 17, 2010, a Prehearing Order was entered to facilitate a meaningful conference with the parties as to how the case would be resolved and to direct the exchange of information and documentation concerning the existence of the debt.

The Respondent complied with that Order and a Narrative was filed, together with supporting documentation on March 3, 2010. The Petitioner filed his documentation with Rural Development and it was forwarded to the Hearing Clerk on April 14, 2010. In the materials provided, Mr. Bircher acknowledged signing the note and mortgage which gave rise to the obligation being sought to be collected, but expressed the belief that he should be liable for only half of the obligation. During the hearing, it was explained to

Mr. Bircher that by the terms of the note the obligation was joint and several and that the Government was entitled to collect the full amount from him.

The Narrative filed by the Respondent reflects that foreclosure proceedings were brought by the lender against the Petitioner and the property was sold in a short sale with less being realized from the sale than the amount of the obligation owed. The total amount due prior to the sale was \$79,672.00. Sale proceeds amounted to \$68,924.53. After application of the sale proceeds, the balance owed was \$10,747.47. USDA has received three payments totaling \$2,956.00 (after deduction of Treasury fees), leaving the current balance owed of \$7,791.47, exclusive of Treasury fees in the potential amount of \$2,181.61.

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 February 9, 1989, the Petitioner and his then wife, Susanna Bircher received a home mortgage loan in the amount of \$95,000.00 from the United States Department of Agriculture (USDA) Rural Development (RD) for property located at 111 South Road, Templeton, Massachusetts. RX-1.
2. The property was sold at a short sale on July 22, 2002 with proceeds realized from that sale in the amount of \$68,924.53, leaving a balance due of \$10,747.47. RX-3.
3. Treasury offsets totaling \$2,956.00 have been received. RX-3.
4. The remaining unpaid debt is in the amount of \$9,973.08. RX-4.

Conclusions of Law

1. Mark Bircher is indebted to USDA Rural Development in the amount of \$9,973.08 for the mortgage loan extended to him.
2. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.
3. The Respondent is entitled to administratively garnish the wages of the Petitioner.

Order

For the foregoing reasons, the wages of the Mark Bircher shall be subjected to administrative wage garnishment at the rate of 15% of disposable pay, or such lesser amount as might be specified in 31 C.F.R. § 285.11(i).

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

Done at Washington, D.C.
April 14, 2010

PETER M. DAVENPORT
Acting Chief Administrative Law Judge

Copies to: Mark Bircher
Mary Kimball
Dale Theurer

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue SW
Room 1031, South Building
Washington, D.C. 20250-9203
202-720-4443
Fax: 202-720-9776