

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 10-0167

In re: BRYAN P. FINNEMORE,

Petitioner

DECISION AND ORDER

This matter is before the Administrative Law Judge upon the request of Brian P. Finnemore 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 March 29, 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 April 13, 2010. On April 23, 2010, the Petitioner faxed his materials to the Hearing Clerk.

The materials filed by the Petitioner relate only to his financial condition. In his dispute package, Mr. Finnemore indicated that he does not owe the debt because he was told by USDA that if he sold his home to someone else in the program, the debt would be paid in full. He also indicated that the transaction was completed in 1997, and that being it has been almost 13 years, he has no documentation and any witnesses no longer work

there. The allegation that a USDA employee has told a borrower that USDA would accept current fair market value in satisfaction of the outstanding mortgage is commonly made and the passage of time before attempting collection action increases the difficulty of a borrower's ability to satisfy their burden of proof.

The Narrative filed by the Respondent reflects that 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 \$72,461.02. Sale proceeds amounted to \$69,000.00 and were received by USDA¹; however, due to the unpaid principal, accrued interest, and closing costs, the Petitioner owed \$12,624.05 which was transferred to a new account (#80607930) which has continued to accrue interest.

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 September 7, 1993, the Petitioner and Kim Finnemore obtained a existing USDA loan of \$70,000.00 to purchase a residence at 17 Baker Street, Clinton, Missouri. RX-1.
2. The property was sold at a short sale on January 7, 1998 with proceeds realized from that sale in the amount of \$69,000.00, leaving the following amounts due:
 - a. \$455.41 in unpaid principal.
 - b. \$3,005.61 accrued interest.
 - c. \$8,652.25 closing costs. RX-3.

¹ For reasons which are not clear, contrary to the usual practice, the closing costs were not deducted from the sales proceeds and by placing them in a new account, interest has continued to accrue. In determining the amount due, an adjustment will be made to stop the accrual of further interest.

3. The remaining unpaid debt is in the amount of \$12,113.27, exclusive of potential Treasury fees.

4. The Petitioner's spouse is disabled and their financial condition reflects a marginal existence, with minimal ability to pay more than normal recurring necessary expenses and no current ability to liquidate the debt sought to be collected.

Conclusions of Law

1. Bryan P. Finnemore is indebted to USDA Rural Development in the amount of \$12,113.27 for the mortgage loan(s) extended to him.

2. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

3. Due to the Petitioner's financial hardship, the Respondent is **NOT** entitled to administratively garnish the wages of the Petitioner.

Order

For the foregoing reasons, the wages of the Bruan P. Finnemore **MAY NOT** be subjected to administrative wage garnishment.

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

Done at Washington, D.C.
May 24, 2010

PETER M. DAVENPORT
Acting Chief Administrative Law Judge

Copies to: Bryan P. Finnemore
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