

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 10-0282

In re: Edward Kuntz,

Petitioner

DECISION AND ORDER

This matter is before me upon the request of Edward Kuntz 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 June 29, 2010, 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 August 26, 2010.

The Rural Development (RD) complied with that Order and a Narrative was filed, together with supporting documentation on July 29, 2010. Mr. Kuntz was represented by LaRoy Baird and filed his documentation on August 25 and on October 28, 2010 with Rural Development and it was forwarded to the Hearing Clerk.

On August 26, 2010 at the scheduled time, RD was represented by Ms. Mary Kimball. Mr. Kuntz was available for the conference, but did not testify except to state his expenses under oath.

The parties were sworn. Following the hearing, RD filed a correction to the Narrative and RX-3 and supplied the application of funds statement (8 pages) RX-7.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Discussion

Mr. Kuntz through his counsel suggests that the effect of the short sale is that the underlying debt is discharged. While it is true that the mortgage securing the Promissory note was “satisfied” such that good title could be obtained by the new purchasers of Mr. Kuntz’s property (EK-4), the underlying obligation of the promissory note remains a valid instrument. As an accommodation to the overall short sale transaction, Tim Warner on behalf of RD, released (disengaged) the security connection (mortgage) from the lien to the underlying property that Mr. Kuntz was selling. EK-1. The mortgaged property which was previously secured became unencumbered for sale to the new buyers, Leon and Therese Beitelspacher. Thus the “debt” covered by the Reamortization Agreement was converted from a secured note (via the Mortgage) to an unsecured note. I find that RD has met its initial burden of establishing the “debt.” Mr. Kuntz provided his financial information under oath and raised issues of financial hardship. I performed a Financial Hardship calculation. Although the transportation component of Mr. Kuntz’s monthly expenses are high, his other living expenses are low. Even after the payoff of his lawyer loan of \$2500 there is no margin for garnishment.

Findings of Fact

1. On December 23, 1986, the Petitioner (and his then wife, Linda Kuntz) received a home mortgage loan in the amount of \$38,000.00 from Farmers Home Administration

(FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) for property located in Linton, ND 58552.¹ RX-1.

2. Linda J. Kuntz was given a “Release from Personal Liability” (Form FmHA 1965-8) on February 11, 1992. RX-6.

3. Edward Kuntz being the sole remaining debtor, re-amortized the debt on/about March 23, 1997 and May 23, 1997 after delinquent taxes were paid on his behalf by USDA. The delinquent tax payments were added to principal (increased to \$40,595.18) at the same rate and terms as the original note. Narrative, RX-1 @ p. 3 of 3, RX-7 @ p. 5 of 8.

4. The borrower defaulted on the loan and the property was sold in a “short sale” on January 19, 2001 with proceeds realized from that sale in the amount of \$19,561.76. RX-7 @ p. 6 of 8.

5. At the time of the short sale, the amount owed by Edward Kuntz was \$39,997.94 for the principal and \$4,768.35 in accrued interest for a total of \$44,746.29 RX-3 (as corrected).

6. After the sales proceeds were posted, Mr. Kuntz owed \$25,184.53 RX-3 (as corrected).

7. Treasury offsets totaling \$4,087.19 exclusive of Treasury fees have been received. RX-3 (as corrected).

8. The remaining unpaid debt is in the amount of \$21,097.34 exclusive of potential Treasury fees. RX-4.

9. The remaining potential treasury fees are \$5,907.26. RX-4.

10. Mr. Kuntz has been employed for over one year.

¹ Complete address maintained in USDA files.

11. Mr. Kuntz submitted his financial statements under oath which included his gross weekly salary and monthly expenses, but did not state deductions for taxes (or net weekly salary).

12. Based upon the available financial information, I performed a Financial Hardship calculation.²

Conclusions of Law

1. Edward Kuntz is indebted to USDA Rural Development in the amount of \$21,097.34 for the mortgage loan extended to him.

2. Edward Kuntz is indebted to the US Treasury for potential fees in the amount of \$5,907.26.

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

4. The Respondent is NOT entitled to administratively garnish the wages of the Petitioner.

² The Financial Hardship Calculation is not posted on the OALJ website.

5.

Order

For the foregoing reasons, the wages of Edward Kuntz shall NOT be subjected to administrative wage garnishment.

RD may re-evaluate Mr. Kuntz's financial position in one year.

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

Done at Washington, D.C.
November 22, 2010

JAMES P. HURT
Hearing Officer

Copies to:

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