

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0510

In re: JOSEPH McVENE,

Petitioner

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the July 3, 2012 request of Joseph McVene (“Petitioner”) for a hearing to address the existence or amount of a debt alleged to be due, and if established, the propriety of imposing administrative wage garnishment. By Order issued on August 2, 2012, the parties were directed to provide information and documentation concerning the existence of the debt and the matter was set for a telephonic hearing. Subsequently, Petitioner requested a continuance, which was granted by Order issued August 31, 2013. The hearing was rescheduled for October 3, 2012.

The Respondent filed a Narrative, together with supporting documentation¹. Petitioner failed to supplement the record with documents regarding his loan. Considering the length of time that the record was held open without supplemental evidence, I find it appropriate to close the record. Petitioner represented himself and Michelle Tanner represented USDA-RD.

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 December 15, 2009, the Petitioner received a home mortgage loan² in the amount of \$47,780.00 to purchase residential real property located in Forest City, North Carolina.
RX-2.

¹ References to Respondent’s exhibits herein shall be denoted as “RX-#”.

² Petitioner obtained the loan with his wife, from whom he is now separated.

2. Petitioner signed an agreement to repay USDA-RD for any loss paid to the Lender pursuant to USDA-RD's guarantee loan program. RX-1.
3. The Petitioner experienced a loss of income due to his wife's illness and received a three month forbearance on paying his loan. RX-2.
4. Petitioner and his wife eventually defaulted on the loan and Lender JP Morgan Chase Bank foreclosed on the property, acquiring it at a foreclosure sale held on July 15, 2009. RX-3.
5. The property was sold to a third party on May 14, 2010 for \$17,000.00.
6. The amount due at the time of the foreclosure sale was \$ 51,841.36, consisting of principal, interest, advances, and costs. RX-6,
7. After application of the value estimated by USDA-RD, the amount unpaid on the loan was \$39,074.50. RX-6.
8. USDA-RD paid a loss claim to the Lender of \$39,074.50 and referred the account to U.S. Department of Treasury ("Treasury") for collection. RX-6; RX-8.
9. Income tax refunds due to Petitioner and his wife have been intercepted by Treasury and applied to the balance of the account.
10. Petitioner's wages have been garnished and applied to his account.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.
2. Petitioner is indebted to USDA Rural Development in the amount of \$39,074.50, exclusive of potential Treasury fees for the mortgage loan extended to him and his wife.
3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.
4. The Petitioner's request for a hearing was not timely filed, and therefore, his wages were subjected to garnishment at the maximum statutory rate of 15%.

5. Petitioner's necessary and fixed expenses severely limit his disposable income, which can not support wage garnishment at the maximum rate.
6. Petitioner's income can withstand garnishment at a reduced rate of 5%.
7. Treasury shall remain authorized to undertake all other appropriate collection action.

ORDER

For the foregoing reasons, Petitioner shall be subjected to administrative wage garnishment at this time, at the reduced rate of 5% of his disposable income.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact.

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

So Ordered this 21st day of February, 2013 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge