

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 09-0004

In re: DESTRY FUGATE,

Petitioner

DECISION AND ORDER

This matter is before the Administrative Law Judge upon the request of the Petitioner, Destry Fugate, 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 October 20, 2008, 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. Following the filing of the Narrative by the Respondent, a teleconference was held with the parties on October 30, 2008. During the teleconference, Mr. Fugate indicated that he was not contesting the amount of the debt, but rather was seeking relief from or postponement of any garnishment based upon his limited ability to repay the indebtedness. A summary of that teleconference was mailed to the parties, and

schedules¹ were mailed to the Petitioner to be filed with the Hearing Clerk's Office and the Respondent to facilitate a review of the Petitioner's ability to pay. The Petitioner filed the financial information with the Hearing Clerk's Office on November 13, 2008, and the Respondent acknowledged receipt of the copy sent to them.

A telephonic hearing was held with the parties on December 4, 2008 to determine if all necessary information was in the record. There being no additional information needed, the parties were advised that the case would be taken under advisement and a decision issued on the record. On the basis of the record before me, nothing further having been received from the Petitioner, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On April 20, 2005, the Petitioner, Destry Fugate and his wife Staci Fugate, applied for and received a home mortgage loan guarantee from the United States Department of Agriculture (USDA) Rural Development (RD) and on April 26, 2005 obtained a home mortgage loan for property located at 158 Peachtree Street, Loudon, Tennessee from J.P. Morgan Chase Bank, N.A. (Chase) for \$97,500.00 (Loan Number 1082447754). RX-1.
2. In 2007, the Petitioner defaulted on the mortgage loan and foreclosure proceedings were initiated. RX-2.
3. Chase purchased the secured property at the foreclosure sale on September 11, 2007 for \$80,750.00. The property was later re-sold by Chase on December 19, 2007 for \$77,900.00. RX-2.

¹ The financial schedules included, inter alia, an income statement and asset and liabilities schedules all to be filed under oath.

4. The Summary of Loss Claim Paid on the Loan Guarantee reflects that USDA paid Chase \$36,213.92 under the Loan Guarantee, including principal, accrued interest, the costs of foreclosure, maintenance, and subsequent sale, less the final sales proceeds.

Conclusions of Law

1. The Petitioner, Destry Fugate, is indebted to USDA RD in the amount of \$36,213.92 as of January 30, 2008 for the mortgage loan guarantee extended to him, further identified as Loan account number 1082447754.
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 Petitioner, Destry Fugate, shall be subjected to administrative wage garnishment at the rate of 15% of disposable pay, or such lesser amount as 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.
December 9, 2008

PETER M. DAVENPORT
Administrative Law Judge

Copies to: Destry Fugate
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

