

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 09-0080
)
Shane Weller,)
)
Petitioner)

Decision and Order

This matter is before me upon the request of the Petitioner, Shane Weller for a hearing in response to efforts of Respondent to institute a federal administrative wage garnishment against him. On July 7, 2009, Administrative Law Judge Jill Clifton issued a Pre-hearing Order requiring the parties to exchange information concerning the amount of the debt. On August 25, 2009, Judge Clifton issued an AMENDED Notice of Hearing and Prehearing Filing Deadlines.

The case was assigned to me on September 29, 2009.

I conducted a telephone hearing at the scheduled time on October 2, 2009. USDA Rural Development Agency (RD) was represented by Gene Elkin, Esq. and Mary Kimball testified on behalf of the RD agency.

Petitioner was self represented.

The witnesses were sworn in. RD had filed a copy of a Narrative along with exhibits RX-1 through RX-6 on July 14, 2009 with the OALJ Hearing Clerk and certified that it mailed a copy of the same to Petitioner.

Petitioner submitted documents or exhibits (Seven pages plus a Fax cover page) to Ms. Kimball on/about September 29, 2009 and she forwarded them to the OALJ

Hearing Clerk.

Petitioner owes \$51,913.65 on the USDA RD loan as of October 2, 2009, and in addition, potential fees due the US Treasury pursuant to the terms of the Promissory Note.

Findings of Fact

1. On January 17, 2005, Petitioner Shane Weller obtained a USDA Rural Development home mortgage loan for property located at ##### Lafayette Ionia, MI 488##.¹ Petitioner signed a promissory note for \$89,900 and a Rural Development Loan Guarantee. RX-1.

2. On July 1, 2006 Petitioner was sent a Notice of Acceleration and Demand for Payment (Default) on the Promissory Note. RX-3 and Ms. Kimball's testimony. At the time of the Default Notice, the balance due on the note was \$88,380.06 plus unpaid interest. RX-2 @ P. 2 of 7, RX-3.

3. The total debt attributed to Petitioner at the time of the foreclosure was \$98,788.84 which included the costs of sale. RX-2 @ p. 5 of 7.

4. The lender (Country-Wide Home Loans Inc.) acquired the property at the foreclosure sale on December 21, 2006 for a bid price of \$91,920.43. RX-2. P. 3 of 7.

5. The lender listed the property for sale on August 29, 2007 and was able to sell it a new purchaser for \$48,000 on October 5, 2007. RX-2 @ P. 4 of 7.

6. A Broker's opinion (Coldwell Banker) completed on August 16, 2007 opined that poor economy contribute to the low re-sale price. RX-6.

¹Complete address maintained in USDA records.

7. The Net proceeds of the Sale after foreclosure costs, protective advances, accrued interest was \$41, 425.20 (RX-2 @ p. 5 of 7) for a net amount due of \$57,363.64.

8 After the final sale, an additional recovery (treasury offset) of \$777.86 was received bringing the Petitioner's debt to \$51,913.65. RX-3 & Narrative.

9. The potential fees due U.S. Treasury pursuant to the Loan Guarantee Agreement were unknown.

10. There was oral testimony from Petitioner that he has not been continuously employed by his current employer for 12 continuous months or/alternately he had been involuntarily terminated from his prior employer.

11. Without objection from RD, Petitioner submitted employment records after the hearing, indicating that he may be excused from immediate enforcement of the garnishment action pursuant to 31 C.F.R.§ 285.11(j).

12. Shane Weller is liable for the debt under the terms of the Promissory Note.

Conclusions of Law

1. Petitioner Shane Weller is indebted to USDA's Rural Development program in the amount of \$51,913.65, but garnishment proceedings are suspended at this time.

2. In addition, Petitioner is indebted for potential fees to the US Treasury.

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

4. Petitioner is under a duty to inform USDA's Rural Development of his employment circumstances.

5. Following compliance with 31 C.F.R.§ 285.11(j), the USDA Rural Development Agency (RD) is entitled to administratively garnish the wages of the Petitioner.

Order

For the foregoing reasons, provided the requirements of 31 C.F.R. § 288.11(j) have been met, the wages of the Petitioner, Shane Weller, shall be subject 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.

JAMES P. HURT
Hearing Official

November 13, 2009