

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 10-0027
)
Michael O'Brien,)
)
Petitioner)

Final Decision and Order

This matter is before me upon the request of the Petitioner, Michael O'Brien, for a hearing in response to efforts of Respondent to institute a federal administrative wage garnishment against him. On November 12, 2009, I issued a Pre-hearing Order requiring the parties to exchange information concerning the amount of the debt.

I conducted a telephone hearing at the scheduled time on January 26, 2010. USDA Rural Development Agency (RD) was represented by Gene Elkin, Esq., and Mary Kimball who testified on behalf of the RD agency. Tom Weaver was present from RD but did not testify.

Petitioner was self represented.

The witnesses were sworn in. RD had filed a copy of a Narrative along with exhibits RX-1 through RX-5 on December 11, 2009 with the OALJ Hearing Clerk and certified that it mailed a copy of the same to Petitioner. RD subsequently filed RX-6 and RX-7 with a copy to Petitioner.

Petitioner submitted documents or exhibits PX-1 through PX-11 (including a sworn statement, and a one page typed narrative dated 12/2/09. Ms. Kimball acknowledged that RD had received the Petitioner's submissions prior to the Hearing.

Petitioner owes \$21,037.55 on the USDA RD loan as of today, and in addition, potential

fees of \$5,890.52 due the US Treasury pursuant to the terms of the Promissory Note.

Findings of Fact

1. On August 15, 2003, Petitioner Michael O'Brien and Michelle O'Brien obtained a USDA Rural Development home mortgage loan for property located at ### Main Street, Brewster, KS 677##.¹ Petitioner was co-signor to a promissory note for \$31,000. RX-1@ p. 1.

2. On July 16, 2006, Petitioner defaulted on the note and was sent a Notice of Acceleration and Demand for Payment (Default) on the Promissory Note. Narrative, RX-3, and Ms. Kimball's testimony. At the time of the Default Notice, the balance due on the note was \$34,398.89. Narrative, RX-4.

3. The property was sold in a "short sale" after notice to Petitioner to a new buyer for a price of \$12,000. Narrative, Ms. Kimball testimony, RX-6 and PX-11.

4. The total amount of debt owed after the short sale was \$22,398.89. RX-4.

5. After the final sale, there was an additional recovery (treasury offset) of \$927.78 and subsequent garnishments totaling \$342.97 which brought the Petitioner's debt down to \$21,037.55. Ms. Kimball testimony, RX-4, RX-7, Narrative, and supplemental Narrative.

6. The potential fees due U.S. Treasury pursuant to the Loan Guarantee Agreement are \$5,890.52. Ms. Kimball testimony and RX-5 (as orally updated).

7. There was oral testimony from Petitioner that he has been continuously employed by his current employer for 5 years. Petitioner's gross monthly income is [REDACTED]. PX-2.

8. The Petitioner raised issues of financial hardship resulting from the garnishment process. Petitioner's Current Income and Expense Schedules (PX-3 and PX4) were evaluated

¹Complete address maintained in USDA records.

using the Financial Hardship Calculation program. The result of the calculation is that RD is not entitled to garnish Petitioners wages at this time. The Financial Hardship Calculation Worksheet is attached² to this Order.

9. Michael O'Brien is jointly and severally liable for the debt under the terms of the Promissory Note.

Conclusions of Law

1. Petitioner Michael O'Brien is indebted to USDA's Rural Development program in the amount of \$21,037.55.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$5,890.52.

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 current address, employment circumstances, and living expenses.

² The Financial Hardship Calculation is not posted online.

5. Garnishment proceedings are suspended pending a review of Petitioner's income and expenses in one year from the date of this order. Following compliance with 31 C.F.R. § 285.11(i) and (j), the USDA Rural Development Agency (RD) is entitled to administratively garnish the wages of the Petitioner.

Order

Garnishment proceedings are suspended for one year. For the foregoing reasons, provided the requirements of 31 C.F.R. § 288.11(i) & (j) have been met, RD may review Petitioner's income and expenses in one year from the date of this order. Following compliance with 31 C.F.R. § 285.11(i) and (j), the USDA Rural Development Agency (RD) is entitled to administratively garnish the wages of the Petitioner.

This Final Decision and Order will be effective after the parties have been given a 10 day comment period on the "Hardship Calculations."

Any new or additional financial information must be under the continuing oath of the hearing.

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

JAMES P. HURT
Hearing Official

February 25, 2010