

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 10-0165
)
Mary Witchley,)
)
Petitioner)

Final Decision and Order

This matter is before me upon the request of the Petitioner, Mary Witchley, for a hearing in response to efforts of Respondent to institute a federal administrative wage garnishment against her. On March 18, 2010, 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 June 7, 2010. USDA Rural Development Agency (RD) was represented by Mary Kimball who testified on behalf of the RD agency.

Petitioner was present and 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 May 14, 2010 with the OALJ Hearing Clerk and certified that it mailed a copy of the same to Petitioner. Ms. Witchley stated that she received RD's Exhibits and witness list. Petitioner submitted exhibits PX-1 (4 pages financial information) and PX-2 (Discharge of Mortgage) . I re-label the death certificate as PX-3 (3 pages). After the hearing Petitioner filed a single week's pay stub which I label as PX-4 .

Petitioner owes \$82,134.07 on the USDA RD loan as of today, and in addition, potential fees of \$22,997.54 due the US Treasury pursuant to the terms of the Promissory Note.

Findings of Fact

1. On August 20, 1993, Petitioner Mary Witchley and David Witchley obtained a USDA FHA home mortgage loan for property located at 2## Hill Street, Chittenango, NY 130**.¹ Petitioner was co-signor to a promissory note for \$69,500. RX-1 @ p. 1 of 3.

2. Borrowers become delinquent on their payments and were defaulted.

3. The mortgaged property was scheduled to be sold in a foreclosure sale on July 19, 2004. RX-3 @ p. 2 of 6.

4. Prior to the judicial sale, the principal balance due on the note was \$82,935.07. Narrative. RX-3 @ p. 5,6 of 6, RX-4. The total balance due before the sale was \$87,320.28. RX-4 @ p. 1 of 2.

5. Using the guidelines in USDA RHS servicing Handbook HB-2-3550, RD determined that the amount that would be recovered from the scheduled judicial sale after accounting for all costs would result in a zero or negative recovery of funds for the property. Hence, RD determined to re-schedule the underlying mortgage as a valueless secured lien and cancelled the judicial sale. See RD email to me dated June 22, 2010 in response to my inquiry.

6. The title to the property remained with the borrowers and RD filed a release of lien to the property dated September 28, 2004. PX-2.

7. However, The promissory note shown on RX-1 was not forgiven. The debt was converted from a secured debt to an unsecured debt. See RD email dated June 22, 2010.

8. After the sale, Treasury recovered an additional \$5,173 - thus reducing the amount due from Petitioner to \$82,134.07. Narrative, RX-4.

9. The potential fees due U.S. Treasury pursuant to the Promissory Note Agreement are \$22,997.54. Narrative, RX-5.

¹Complete address maintained in USDA records.

10. Petitioner is jointly and severally liable on the debt under the terms of the Promissory Note.

11. Petitioner stated that (as of the date of the hearing) she has been gainfully employed part-time in a car dealership for ten months and has raised issues of financial hardship.

10. Petitioner provided a financial schedule of expenses and a weekly pay stub. I observe that Petitioner's expenses indicate no medical insurance coverage and conclude she is at-risk for future medical expenses.

12. Using the Financial Hardship Calculation program and data from Petitioner's sworn testimony and financial statement (PX1, PX 4), I made a calculation of the appropriate wage garnishment. The calculations are enclosed.²

Conclusions of Law

1. Petitioner Mary Witchley is indebted to USDA's Rural Development program in the amount of \$82,134.07.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of \$22,997.54.

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 her current address, employment circumstances, and living expenses.

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

5. RD may **NOT** administratively garnish Petitioners wages at this time.
6. After one year, RD may reassess Petitioner's financial hardship criteria.

Order

1. The requirements of 31 C.F.R. ¶ 288.11(i) & (j) have been met.
2. The Administrative Wage Garnishment against this debtor is suspended at this time.
3. After one year, RD may reassess Debtor's financial position and modify the garnishment percentage as circumstances dictate.
4. Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's office.

JAMES P. HURT
Hearing Official
June 29, 2010