

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
David E. Hess,) AWG Docket No. 10-0387
)
Petitioner)

Final Decision and Order

This matter is before me upon the request of the Petitioner, David E. Hess, for a hearing in response to efforts of Respondent, USDA’s Rural Development Agency, Rural Housing Service, to institute a federal administrative wage garnishment against him. On August 26, 2010, I issued a Pre-hearing Order setting the date for the hearing and requiring the parties to exchange information concerning the amount of the debt.

Rural Development filed a copy of its Narrative along with exhibits RX-1 through RX-8 on September 3, 2010. On September 16, 2010, at the request of counsel for Mr. Hess, I rescheduled the hearing. Mr. Hess filed his Consumer Debtor Financial Statement on October 21, 2010. On October 29, 2010, I granted counsel’s request to withdraw as counsel for Mr. Hess. Mr. Hess proceeded pro se.

I conducted a telephone hearing on November 18, 2010. Rural Development was represented by Mary Kimball who testified on behalf of the agency. Mr. Hess represented himself. The witnesses were sworn. Mr. Hess acknowledged that he received a copy of Rural Development’s Narrative and Exhibits. Ms. Kimball acknowledged receipt of Mr. Hess’ Consumer Debtor Financial Statement.

On October 13, 1987, Mr. Hess and his then wife, Nancy J. Hess, borrowed \$33,500.00 from USDA Farmers Home Administration to purchase their residence in Stigler, Oklahoma. (RX-1, RX-2). On December 28, 1989, the Hess' obtained a second loan from Farmers Home Administration in the amount of \$2,300.00. Farmers Home Administration has not released Ms. Hess from liability for the loan. However, she is not involved in this proceeding.

Mr. Hess and his then wife, Nancy J. Hess, became delinquent on the loans and on August 28, 1997, USDA Rural Housing Service accelerated the loans. On August 9, 2000, the house was sold by a short sale. USDA received proceeds of \$19,600.11 from the short sale and applied that to the outstanding balance. Prior to the sale Mr. Hess and his then wife, Nancy J. Hess, owed \$49,021.31 (\$32,498.54 in principal, \$14,654.22 in interest and \$1,868.55 in fees) on both loans. Subsequent to the sale, USDA has received \$11,409.76 from collections made by Treasury, leaving a balance of \$17,910.95 owed. In addition, there are remaining potential fees of \$5,015.07 for a total amount due of \$22,926.02.

Based on the testimony during the hearing and the record before me, I conclude that Mr. Hess and his then wife, Nancy J. Hess, owe \$17,910.95 on the USDA Rural Housing loan. However, because Nancy J. Hess is not before me and Mr. Hess and Nancy J. Hess each are responsible for the entire debt, I find that Petitioner David E. Hess owes \$17,910.95 on the USDA Rural Housing loan. In addition, there are potential fees of \$5,015.07 due the US Treasury for the cost of collection.

In determining the percentage of garnishment, if any, to be authorized for collection, I examined Mr. Hess' Consumer Debtor Financial Statement and took into account his testimony during the hearing. Mr. Hess is a roustabout for a well company in Oklahoma. He currently makes approximately [REDACTED] per month. His expenses are reasonable and total approximately [REDACTED] per month. In July 2011, his requirement to pay child support of [REDACTED] per month ends when his son graduates from school. Under these circumstances, I would normally order some level of garnishment to begin in September 2011. However, Mr. Hess testified about his recent significant health issues, including his need to see a neurologist for which he does not have the money. Based on his current health needs and his financial condition, I hold that Mr. Hess has a financial hardship that precluded garnishment at this time. USDA Rural Development may revisit Mr. Hess' financial condition in one year.

Summary of the Facts Presented

1. On October 13, 1987, Mr. Hess and his then wife, Nancy J. Hess, borrowed \$33,500.00 from USDA Farmers Home Administration to purchase their residence in Stigler, Oklahoma. (RX-1, RX-2).
2. On December 28, 1989, the Hess' obtained a second loan from Farmers Home Administration in the amount of \$2,300.00. (RX-1, RX-2).
3. Mr. Hess defaulted on the loan and a short sale was held on August 28, 1997. The combined balance on both loans at that time was \$49,021.31 including \$32,498.54 in

principal, \$14,654.22 in interest and \$1,868.55 in fees. USDA received \$19,600.11 from the short sale.

4. USDA applied the proceeds from the short sale and \$11,409.76 subsequently collected by Treasury to the loan balance leaving leaves a balance of \$17,910.95. In addition, there are potential fees due to the U.S. Treasury in the amount of \$5,015.07 for a total amount due of \$22,926.02.

5. Mr. Hess has significant health issue for which he does not have insurance coverage or the financial resources to pay for the treatment.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction over the parties, Mr. Hess and USDA Rural Development Agency, Rural Housing Service; and over the subject matter, which is administrative wage garnishment.

2. Petitioner David E. Hess is indebted to USDA's Rural Development Agency, Rural Housing Service program in the amount of \$17,910.95.

3. In addition, Mr. Hess is indebted for potential fees to the US Treasury in the amount of \$5,015.07.

4. Mr. Hess' health issues and current financial condition make it a financial hardship on him to garnish his wages; therefore, wage garnishment is not appropriate at this time.

Order

Until the debt is fully paid, Mr. Hess shall give notice to USDA Rural Development Agency, Rural Housing Service or those collecting on its behalf, of any changes in his mailing address; delivery address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).

USDA Rural Development Agency, Rural Housing Service, and those collecting on its behalf, are not authorized to proceed with garnishment at this time.

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

Done at Washington, D.C.
this 24th day of November 2010

STEPHEN M. REILLY
Hearing Official