

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWG Docket No. 10-0446
)	
Robert Lewis,)	
)	
Petitioner)	Decision and Order

Pursuant to a Hearing Notice, I held a hearing by telephone, on December 3, 2010, at 11:00 AM, Eastern local time. Petitioner represented himself without an attorney and gave sworn testimony. Respondent, USDA Rural Development was represented by Mary E. Kimball, Accountant for the New Programs Initiatives Branch at USDA Rural Development in St. Louis, MO. Ms. Kimball also gave sworn testimony and introduced seven exhibits (RX-1 through RX-7).

The parties agree that Petitioner and his former wife, Michelle Lewis, obtained a home mortgage loan from USDA Farmers Home Administration (now USDA Rural Development), on March 10, 1989, for property located at 102 Freedom Road, Anson, TX , and signed a promissory note for \$31,500.00 (RX-1 and RX-2). On October 18, 1990, an additional loan for \$2,840.00 was given to them, and they signed an additional promissory note. Subsequently, Petitioner and Michelle Lewis divorced. Under the terms of the divorce decree, Michelle Lewis retained sole title to the mortgaged property and assumed all liability and debt under the two promissory notes. The loans were defaulted upon, and, on March 4, 1997, a foreclosure sale of the mortgaged house was held when the total amount of the debt was \$43,156.26. After closing costs were paid from the sale proceeds, there was a combined remaining deficiency on the two loans of \$21,055.26.

Since the sale, USDA Rural Development has received \$4,351.10 in collections from Treasury through the administrative offset of income tax refunds otherwise due to Petitioner. The present debt for collection by Treasury is \$16,704.16 plus potential fees of \$4,677.16 for a total of \$21,381.32 (RX-7).

Petitioner asserts that inasmuch as over 13 years has passed since the foreclosure, this administrative garnishment proceeding is time barred.

Respondent argues that the passage of time that would block a federal agency from filing suit does not, however, block a federal agency from using federal administrative wage garnishment proceedings to collect the underlying debt.

Arch Mineral Corporation v. Bruce M. Babbitt, 894 F. Supp. 974, 981-984 (S.D. WV 1995) concluded that the government is generally exempt from the operation of a statute of limitations unless Congress explicitly provides otherwise. The court noted that the statute of limitations (28 U.S.C. § 2415(a)) that bars the government from filing a complaint to enforce a debt after six years, does not contain a limitation that would extinguish the debt itself and cause administrative remedies to not be available to the government. Based on this fact and the lack of legislative history showing a contrary intent, the court held the government may pursue administrative remedies to enforce its rights under the debt which are not time barred by the statute of limitations. In support of its holding, the Court followed an earlier decision, *Gerrard v. United States Office of Educ.*, 656 F. Supp. 570, 573 (N.D.Cal.1987), that had acknowledged the government's right to collect a debt by administrative offset after the passage of the specified six year period.

It is noted that *Arch Mineral*, 894 F. Supp. at 984, did differentiate between the government's collection of a debt under a contract from its collection of delinquent civil penalties. The latter are time barred after the lapse of five years, both in actions brought in court and in proceedings brought in an administrative agency due to a different interpretation by the courts of the applicable statute of limitation set forth at 28 U.S.C. § 2462.

Inasmuch as this proceeding involves the collection of a debt by administrative remedy and not the collection of a civil fine, penalty or forfeiture, the cited case therefore provides support for Respondent's position that this administrative wage garnishment proceeding is not time barred.

However, federal administrative wage garnishment proceedings are governed by 31 C.F.R. § 285.11, a regulation that requires consideration to be given to the financial hardship that collection of the debt would cause the debtor. (31 C.F.R. § 285.11(f)(8)(ii)). This is an ostensible requirement to consider equitable issues that may cause garnishment of the debtor's wages to not be appropriate.

Petitioner has testified that he turned the house over to his wife in the course of their divorce in order to obtain the custody of their two children. He earns [REDACTED] per month as a technician for an automobile dealership. His monthly expenses are: rent-[REDACTED] gas-[REDACTED], electricity-[REDACTED] water-[REDACTED], car payments-[REDACTED] car insurance-[REDACTED] food-[REDACTED] gasoline-[REDACTED], and clothing and miscellaneous-[REDACTED] or [REDACTED] total. This leaves [REDACTED] as his net disposable monthly income. Under the cited regulation, no more than 15% of a debtor's disposable pay may be garnished.

Mr. Lewis is paid weekly, and I find that [REDACTED] per week is the maximum amount that may be made subject to garnishment. Moreover, no part of his wages should be garnished for the next six months to allow him time to obtain a loan to settle his share of this debt with Treasury.

ORDER

It is hereby ORDERED that for six months from the date of this decision and Order, nothing may be garnished from Petitioner's pay. Thereafter, no more than \$10.00 per week may be garnished from Petitioner's pay.

Dated: _____

Victor W. Palmer
Administrative Law Judge