

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0101

In re: ERNESTO HINOJOSA,
Petitioner

Final Decision and Order

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the request of Ernesto Hinojosa (“Petitioner”) for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Treasury (“Treasury”) through the United States Department of Agriculture, Rural Development Agency (“Respondent”; “USDA-RD”), and if established, the propriety of imposing administrative wage garnishment. By Order issued on February 16, 2011, the parties were directed to submit and exchange information and documentation concerning the existence of the debt. In addition, the matter was set for a telephonic hearing to commence on March 22, 2011 and deadlines for filing documents with the Hearing Clerk’s Office were established. The Respondent filed a Narrative, together with supporting documentation on February 28, 2011 and Petitioner filed a Consumer Debtor Financial Statement on March 8, 2011.

I conducted a telephone hearing at the scheduled time on March 22, 2010. Respondent was represented by Mary Kimball who testified on behalf of the RD agency. Ms. Marcia Moore of USDA-RD attended as an observer. Petitioner, acting as his own representative, participated and testified.

Petitioner acknowledged that he had received a copy of Respondent’s narrative statement

and exhibits identified as RX 1 through RX 7. Respondent acknowledged receiving a copy of Petitioner's correspondence, including a Consumer Debtor Financial Statement. I hereby denote that statement as Petitioner's exhibit, PX-1.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered:

Findings of Fact

1. On May 31, 2007, Petitioner Ernesto Hinojosa executed a promissory note to Coastal Bend Mortgage, Inc., d/b/a Global Mortgage Group for a loan in the amount of \$124,387.00 for the purchase of real property in Alice, Texas. RX-1.

2. Subsequently, the loan was assigned to JP Morgan Chase Bank, N.A. RX-1.

3. On May 3, 2007, Petitioner signed a request for Respondent to guarantee the loan with Coastal Bend Mortgage, Inc. RX-2.

4. On October 1, 2008, Petitioner defaulted on the loan, which at the time had a balance of \$122,722.55. RX 3.

5. Foreclosure action initiated on April 27, 2009 was completed with sale of the property to the lender on July 7, 2009 in the amount of \$106,250.00. RX-3

6. The lender paid protective advances, which together with the principal balance and interest accrued, resulted in a balance of \$134,961.16. RX-3.

7. The foreclosed property was sold on October 1, 2009 for the sum of \$104,000.00. RX-5.

8. The lender realized proceeds in the amount of \$89,620.08 after accounting for fees and costs relating to the sale of the property. RX-3.

9. USDA RD paid Chase Bank, N.A the amount of \$43,737.08 as the amount of net loss under the guarantee agreement. RX-4.

10. When Treasury proposed the instant wage garnishment action, the amount due was \$43,708.84. RX-7.

11. The principal of the debt has been subsequently reduced because Petitioner's tax refund was intercepted and applied to offset the debt.

11. In addition, potential fees due U.S. Treasury pursuant to the Loan Guarantee Agreement are \$12,237.92. RX-7.

13. Mr. Hinojosa is the sole signor of the promissory note and guarantee, and is liable for the debt.

14. Mr. Hinojosa has been gainfully employed as a mechanic, but has asserted that wage garnishment would constitute a financial hardship.

15. Mr. Hinojosa's monthly wages vary according to whether or not he works overtime.

16. Petitioner provided a financial schedule of expenses that include a wage garnishment of approximately \$1,000.00 per month for child support for three children who do not reside with him. PX-1.

17. In addition to paying child support, Petitioner contributes to other expenses for his children, including clothing, and health and dental insurance.

18. Petitioner's liability for a loan for his vehicle shall extend for several more years.

19. Petitioner recently secured a long-term loan for the purchase of household goods.

20. Although Petitioner undertook the household loan after notice of the instant proposed garnishment action, Petitioner believed that he was not solely liable for his home loan.

21. Petitioner's receipt of Respondent's exhibits in late February demonstrated to him that he was the sole signor of the note and request for guarantee.

22. In determining whether wage garnishment would constitute a hardship, I considered Petitioner's sworn testimony, his financial statement (PX-1), and Treasury Standard Form SF 329C (Wage Garnishment Worksheet).

Conclusions of Law

1. Petitioner, Ernesto Hinojosa, is indebted to USDA's Rural Development program in the amount of \$55,944.76, representing the debt and Treasury fees, minus the amount offset by his tax refund.

2. All procedural requirements for administrative wage garnishment set forth in

31 C.F.R. ¶ 285.11 have been met.

3. Wage garnishment at the legally permissible amount would constitute a hardship.
4. USDA-RD may administratively garnish Petitioner's wages in the amount of 4% percent of his Monthly Disposable Income, estimated at \$2,200.00 after accounting for child support payments, health insurance premiums, and tax withholdings.
5. Treasury shall remain authorized to undertake any and all other appropriate collection action.
6. After one year, USDA-RD may reassess Petitioner's financial hardship criteria.

Order

1. The Administrative Wage Garnishment may proceed at this time at the rate of 5.0% of his Monthly Disposable Income.
2. After one year, RD may reassess the Debtor's financial position and modify the garnishment percentage as circumstances dictate.
3. Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.
4. Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.
5. Until the debt is satisfied, Petitioner shall give to USDA RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact. Petitioner may direct questions to RD's representative Mary Kimball, c/o:

USDA New Program Initiatives Branch
Rural Development Centralized Servicing Center
4300 Goodfellow Blvd. F-22
St. Louis, MO 63120
314-457-5592
314-457-4426 (facsimile)

6. Copies of this Decision and Order shall be served upon the parties by the Hearing

Clerk's Office. **N.B. Change of Petitioner's Address:**

**Ernesto Hinojosa
2555 S. Cameron, Apartment 1301
Alice, TX 78332**

So Ordered this _____day of March, 2011 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge