

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0106

In re: SHERRYL MESSER,

Petitioner

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges (“OALJ”) upon the request of Sherryl Messer (“Petitioner”) for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development (“Respondent”; “RD”), and if established, the propriety of imposing administrative wage garnishment. By Order issued on February 7, 2011, the parties were directed to provide information and documentation concerning the existence of the debt and deadlines were set for the submissions. In addition, the matter was set for a telephonic hearing to commence on March 31, 2011.

The Respondent filed a Narrative, together with supporting documentation¹ on February 18, 2011. At the hearing, Petitioner represented herself and Respondent was represented by Mary E. Kimball, Accountant for the New Program Initiatives Branch of RD, Saint Louis, Missouri. Petitioner testified, as did her husband Hank Messer, Realtor Bruce Gooding and Ms. Kimball.

¹ References to Respondent’s exhibits herein shall be denoted as “RX-#”.

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 December 29, 1988, the Petitioner and her husband Hank Messer signed a promissory note for a home mortgage loan in the amount of \$34,120.00 from RD for residential property located in Hugo, Oklahoma. RX-1; RX-2.
2. The Petitioner subsequently defaulted on the loan when the balance due on the loan was \$33,407.57, of which \$31,154.03 represented principle; \$1500.12 represented interest; and \$753.42 represented fees.
3. With the help of realtor Bruce Gooding, on January 24, 1997, the Petitioner and her husband sold the property at a short sale that yielded the sum of \$12,600.98.
4. A balance due on the loan of \$20,806.59 was referred to the U.S. Department of Treasury (“Treasury”) for collection, as required by prevailing statutes and regulations. RX 4; Respondent’s Narrative.
5. Treasury offsets totaling \$5,137.18 exclusive of Treasury fees have been received and applied to the balance. RX-4.
6. The outstanding indebtedness is now \$15,669.41 plus potential fees of \$4,387.43, for a balance due of \$20,056.84. RX-5.
7. On November 10, 2010, Treasury, through its agent, issued a notice to Petitioner of intent to garnish wages.
8. Petitioner timely requested a hearing, which was held on March 31, 2011.

9. Petitioner contested the validity of the debt, and her husband Hank Messer testified that he and Petitioner believed from representations of RD officials that the balance of the debt would be forgiven.

10. Realtor Mr. Gooding testified that he believed that the debt would be reduced.

11. Petitioner did not recall receiving copies of Respondent's offer to compromise the debt, mailed in 2001.

12. Petitioner Sherryl Messer is employed, and her employer pays social security taxes and unemployment compensation on her behalf.

14. Petitioner agreed that the Consumer Debtor Financial Report that she signed and that was filed in her husband's case, Docket No. 11-0105, represents her income and expenses.

15. In determining whether wage garnishment would constitute a hardship, I have considered the sworn testimony, Petitioner's signed financial statement², Treasury Standard Form SF 329C (Wage Garnishment Worksheet), and standard geographical allowable per diem expense rates (www.irs.gov; www.opm.gov).

16. Petitioner expressed willingness to attempt to resolve the debt.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.

2. Petitioner is indebted to USDA Rural Development in the amount of \$15,669.41 plus potential fees of \$4,387.43, for a balance due of \$20,056.84 for the balance due after sale on the mortgage loan extended to her.

3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met with respect to Petitioner Sherryl Messer.

² PX-1 reflects that Petitioner owns property in addition to her residence as well as a variety of vehicles, all of which are encumbered.

4. Although Petitioner's monthly income appears to be consumed by expenses, I conclude from consideration of her financial statement and the number of assets held jointly by her and her husband that garnishment would not present a financial hardship, as that term is recognized by law.

5. I nevertheless find that garnishment should be deferred for six (6) months to allow Petitioner and her husband to negotiate a compromise of the debt or a payment plan with Treasury.

6. The Respondent is entitled to administratively garnish the wages of Petitioner Sherryl Messer after that six month period; however Respondent shall not be entitled to garnish more than 15% of Petitioner Sheryll Messer's wage.

7. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

For the foregoing reasons, the wages of Petitioner Sherryl Messer shall **NOT** be subjected to administrative wage garnishment at this time. As of October 1, 2011, garnishment up to 15% of Petitioner Sherryl Messer's disposable pay is authorized. 31 C.F.R. §285.11.

Petitioner is encouraged in the interim to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

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.

Until the debt is satisfied, Petitioner shall give to USDA RD or those collecting on Treasury's behalf, notice of any change in 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)

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

So Ordered this 31st day of March, 2011 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge