

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 11-0061
)
Delmar E. Falcon)
)
Petitioner)

Final Decision and Order

This matter is before me upon the request of the Petitioner (or “Debtor”), Delmar Falcon, for a hearing in response to efforts of Respondent to institute a federal administrative wage garnishment against him. On December 29, 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 revised scheduled time on March 1, 2011. USDA Rural Development Agency (RD) was represented by Mary Kimball who testified on behalf of the RD agency.

Mr. Falcon was present and was represented by Richard A. McKennett, Esq.

The witnesses were sworn in.

RD had filed a copy of a Narrative along with exhibits RX-1 through RX-9 on January 10, 2011 with the OALJ Hearing Clerk and certified that it mailed a copy of the same to Petitioner. On March 17, 2011, RD filed exhibits RX-10 and RX-11.

Petitioner filed his Narrative and financial statement (under oath) (PX 1 –PX-5) on February 25, 2011. Mr. Falcon’s attorney stated in his Narrative that Petitioner that Petitioner was discriminated against in financial matters related to this loan and related that both Delmar Falcon and his wife have serious health issues and raised issues of financial hardship. On March

30, 2011, Petitioner filed an Additional Narrative stating among other contentions that the FmHA 1944-A6 Interest Assistance forms were accurate when filed. I do not have jurisdiction to determine existence of discrimination in matters of equal credit opportunities¹. Similarly, I am not authorized to opine on matters of the debtor's health, but instead I am bound to determine the amount of the debt and debtor's ability to withstand garnishment of his wages based upon certain financial hardship criteria.

Petitioner owes \$22,686.83 on the USDA RD FmHA loan, and in addition, potential fees of \$6,352.31 due the US Treasury pursuant to the terms of the Promissory Note and reamortize agreement.

Findings of Fact

1. On December 15, 1983, Petitioner Delmar Falcon and Linda Falcon (his wife) obtained a USDA FmHA home mortgage loan of \$48,000.00 for property located at Lots # and # in Block * of the Townsite of Trenton, ND 588##.² Narrative RX-1, RX-2.

2. Borrowers became delinquent on their account. They reamortized their account on August 15, 1998 on the same terms to bring their account current.

3. Borrowers defaulted on the loans and were sent a Notice of Acceleration on January 8, 1999. RX-4 @ p. 1 of 8.

4. Borrowers entered into a short sale September 5, 2002. RX-6 @ p. 1 of 2, Petitioner's Narrative @ p. 1.

3. Prior to the sale, borrowers owed \$42,742.08 as principal and \$2,808.96 as accrued interest. They also owed \$840.37 for fees, and \$202.14 for escrow shortage for a total of \$46,593.55. Narrative, RX-6 @ p. 1 of 2.

4. RD received a net of \$26,683.84 from the short sale. Narrative, RX -6 @ p. 1 of 2.

¹ See 15 U.S.C. § 1691 et seq.

²Complete address maintained in USDA records.

5. During the term of the loan, borrowers submitted requests for assistance on the interest of their loan using FmHA form 1944-A6 for the years of 1997 through 2001, inclusive. RD determined that for those years - that borrowers were not entitled to the Interest Credit assistance and that the borrowers received unauthorized assistance in the total amount of \$11,305.26. RX-5 @ p. 6 of 29.

6. After the application of the short sale proceeds, the borrowers jointly and severally owed \$31,214.97. Narrative, RX-6 @ p. 1 of 2.

7. USDA has received payments amounting to \$8,528.14 bringing the current amount owed to \$22,686.83. RX-6 @ p. 1 of 2.

8. The potential fees due U.S. Treasury pursuant to the Loan Agreement are \$6,352.31. Narrative, RX-7.

9. Mr. Falcon is jointly and severally liable on the debt under the terms of the Promissory Notes.

10. RD presented evidence that for the Tax year 1997, Mr. Falcon's adjusted gross income was \$39,798 (RX-10) whereas his Interest Assistance FmHA 1944-A6 form for same tax year stated his planned income would be \$18,360. (RX-5 @ p. 20 of 29). Following the hearing, Mr. Falcon was given another opportunity to show that his annual income for the tax years 1997 through 2002 was substantially the same as the planned annual income stated on his FmHA forms 1944-A6.

11. Petitioner's counsel stated that the Petitioner could not obtain the tax forms for the years 1997 through 2002 due to government document destruction rules. (Petitioner's Additional Narrative). RD's exhibits regarding the UNAUTHORIZED ASSISTANCE RUNNING RECORD for this borrower's account indicate that borrowers were advised to get those tax records for prior years on May 21, 2002. RX-5 @ p.2 of 29.

12. Under the terms of the FmHA form 1944-A6 @ paragraph XIII, there does not appear to be any fraud penalty for gross understatements estimates of future income for the tax year although recapture is authorized. Therefore, I will make the usual Financial Hardship calculation.

13. Mr. Falcon stated that he has been gainfully employed for more than one year, but he raised issues of financial hardship.

14. Mr. Falcon provided a financial schedule of monthly household income and expenses under oath but did not provide a monthly pay stub from his employer. PX-5. On April 20, 2011, I requested via e-mail to Petitioner's attorney clarifications of certain items on the financial statement. No response has been received.

15. Using the Financial Hardship Calculation program and data from his sworn testimony and financial statement, I made a calculation of the appropriate wage garnishment. I utilized Petitioner's statement of total payroll tax deductions ["Fed, ND, Soc. M.Care"]. I considered the current non-governmental loan obligations. The calculations are enclosed.³

Conclusions of Law

1. Petitioner, Delmar Falcon is jointly and severally indebted to USDA's Rural Development program in the amount of \$22,686.83.
2. In addition, Petitioner is jointly and severally indebted for potential fees to the US Treasury in the amount of \$6,352.31.
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 his current address, employment circumstances, and living expenses.
5. RD may administratively garnish Petitioner's wages at the rate of 15% of his Monthly Family Disposable Income.
6. After one year, RD may reassess Petitioner's financial hardship criteria.

Order

³ The Financial Hardship Calculation is not posted on the OALJ website.

1. The requirements of 31 C.F.R. ¶ 288.11(i) & (j) have been met.
2. The wages of Petitioner may be garnished at the rate of 15% of his monthly Family Disposable Income.
3. After one year, RD may reassess the 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

April 27, 2011