

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0009

In re: Troy Weeks,

Petitioner

Decision and Order

This matter is before the Administrative Law Judge upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On November 24, 2010, a Prehearing Order was entered to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing on January 13, 2011.

The Respondent complied with that Order and a Narrative was filed, together with supporting documentation on December 14, 2010. Andrew B. Jackson, Counsel for the Petitioner entered his appearance and filed the Petitioner's documentation with the Hearing Clerk on December 22, 2010. At the hearing, the Petitioner and Mary E. Kimball testified. A summary of those proceeding was entered on January 13, 2011 and the Petitioner was given ten days in which to file a Memorandum in support of his position. A faxed copy was transmitted on January 21, 2011 and a hard copy was received by the Hearing Clerk's Office on January 31, 2011.

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 16, 1984, the Petitioner and Susan Weeks, then his wife, received a home mortgage loan in the amount of \$35,000.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) for property located in Sebring, Florida. RX-1, 2.

2. On February 25, 1993, the Petitioner and his wife were divorced. A Property Settlement Agreement dated December 17, 1992 was approved as part of the divorce decree. That agreement required the Petitioner to convey his interest in the marital residence which was subject to the FmHA note and mortgage to his ex-wife who in turn was to assume liability for the indebtedness and hold him harmless from any further obligation under the note and mortgage. PX-1

3. In 1999, Susan Weeks, after living in the property for a number of years, defaulted on the note and mortgage and foreclosure proceeding were initiated. A summary judgment of foreclosure was entered in the Circuit Court of the Tenth Judicial Circuit of Florida in and for Highlands County on November 16, 1999 at which time the amount due was established at \$43,050.19, which amount included recapture of interest credit previously granted to the Petitioner and his ex-wife. PX-2.

4. No deficiency judgment appears to have been sought.

5. Treasury offsets totaling \$8,234.26 exclusive of Treasury fees have been received. RX-5.

6. The Petitioner is delinquent in his child support obligations and is under a financial hardship at this time.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. No deficiency judgment having been sought, the Petitioner is no longer indebted to USDA Rural Development for the mortgage loan extended to him.
3. Collection action against the Petitioner shall be **TERMINATED**.
4. Amounts previously collected may be retained without being returned to the party from whom they were collected.
5. If not otherwise barred, the indebtedness may remain at Treasury for continued collection action against Susan Weeks.
6. The Respondent is **NOT** entitled to administratively garnish the wages of the Petitioner.

Order

For the foregoing reasons, the wages of Petitioner may **NOT** be subjected to administrative wage garnishment.

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

May 9, 2011

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Andrew B. Jackson, Esquire
Mary Kimball
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