

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 12-0383

In re: Jason McCanless,
Petitioner

Decision and Order

This matter is before the Administrative Law Judge upon the request of Jason McCanless 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 May 15, 2012, 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 case for a telephonic hearing on July 31, 2012.

The Respondent complied with that Order and a Narrative was filed, together with supporting documentation on June 7, 2012. The Petitioner filed his material with the Hearing Clerk on July 31, 2012, consisting of a Narrative and a letter from Attorney William Kozub to the Department of the Treasury and a Consumer Debtor Financial Statement setting forth the Petitioner's financial condition. At the hearing held on July 31, 2012, both the Petitioner and Michelle Tanner, Appeals Coordinator, Rural Development, United States Department of Agriculture, St. Louis, Missouri testified. Petitioner's wife, Samantha McCanless participated as well, but was not sworn.

On the basis of the record before me, nothing further having been received from the Petitioner, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On September 17, 2008, Petitioner and his wife applied for and received a home mortgage loan guarantee from Rural Development (RD), United States Department of Agriculture (USDA). RX-1.
2. On February 12, 2009, the couple obtained a home mortgage loan for the purchase of property located in Queen Creek, Arizona from CNN Mortgage for \$159,702.00. RX-2
3. On April 2, 2009, the note and mortgage were sold to JP Morgan Chase Bank. RX-2 and Petitioner's Narrative.
4. Following an unforeseen job loss in mid 2009, Petitioner and his wife defaulted on the mortgage loan and despite Petitioner's efforts to secure modification of the loan foreclosure proceedings were initiated. Petitioner's Narrative and RX-3.
5. A foreclosure sale was held on April 21, 2011 and the property was sold to a third party for a bid of \$64,500.00. RX-3.
6. Chase submitted a loss claim and USDA paid Chase the sum of \$96,569.82 for unpaid principal, accrued interest, protective advances, liquidation costs and property sale costs. RX-4, 5.
7. After application of Treasury offsets, the remaining unpaid debt is in the amount of \$96,187.00, exclusive of potential Treasury fees.

8. The income and expenses of the Petitioner's household of five are approximately equal.

Conclusions of Law

1. Jason McCanless is indebted to USDA Rural Development in the amount of \$96,187.00 for the mortgage loan guarantee extended to him.

2. The Petitioner is under a financial hardship at the current time.

3. The Respondent is **NOT** entitled to administratively garnish the wages of the Petitioner.

Order

For the foregoing reasons, the wages of the Jason McCanless may **NOT** be subjected to administrative wage garnishment. The debt will remain at Treasury for cross servicing. Should the Petitioner's financial condition improve, proceedings may be reinstated; however, any hardship determination at that time will be made by Treasury.

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

July 31, 2012

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Jason McCanless
Michelle Tanner
Dale Theurer

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