

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWG Docket No. 12-0501
Terry Smith,)
Petitioner)

Remand Order

This matter is before me upon the request of the Petitioner, Terry Smith, for a hearing in response to efforts of Respondent to institute a federal administrative wage garnishment against her. On July 27, 2012, I issued a Pre-hearing Order requiring the parties to exchange information concerning the amount of the debt. Rural Development filed its Narrative and Exhibits on August 20, 2012.

On August 28, 2012 at the scheduled time, both parties were available for the conference call. Ms. Smith was represented by John S. Odom, Jr. Esq. Petitioner's position is that the 2009 default judgment in favor of the Kentucky Housing Corporation was improperly granted. Further, her position is that the Servicemembers Civil Relief Act (SCRA) 50 U.S.C. App.511(5) is/was controlling at the time of the default judgment since Matthew Smith (husband of Terry Smith – The Petitioner herein) was on active military duty in Afghanistan from April 2008 through April 2012. Px 1 @ P. 1 of 2. She further contends that SCRA is also controlling with regard to her, the spouse, of the active service member. Mr. Odom advised that a State Circuit in Taylor County, Kentucky will address the underlying issues related to SCRA and Kentucky law. That hearing is presently scheduled for September 10, 2012. (See Petitioner's Exhibit "A").

No final determinations of the foreclosure under disability (Military Duty) by the Kentucky courts have been filed with the Office of the Administrative Law Judges in this matter. The matter can not be resolved as to the alleged debt without knowing the propriety of the judicial foreclosure. This matter has become stale.

Order

1. The Administrative Wage Garnishment action is REMANDED to Rural Development for further action.
2. This matter shall be removed from the active docket of the Hearing Clerk's Office as closed.
3. In the event that the judicial sale is determined to have been appropriate under Kentucky State Law, then debtor's prior Request for Hearing on the Wage Garnishment Order shall be deemed to have been timely filed.
4. Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's office.

JAMES P. HURT

Hearing Official

March 25, 2013

Terry Smith (via John Odom, Jr., Esq.)

Michelle Tanner

Dale Theurer