

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) **AWG Docket No. 10-0402**
Sarah Baune,)
)
Petitioner) **Decision and Order**

1. The hearing by telephone was held on November 4, 2010, as scheduled. Ms. Sarah Baune, the Petitioner (“Petitioner Baune”), failed to appear. [She failed to provide a telephone number where she could be reached; she failed to answer the telephone number on her Hearing Request, and she failed to return messages left on the answering machine.] Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and is represented by Mary E. Kimball.

2. The address for USDA Rural Development for this case is

Mary E. Kimball, Branch Accountant
USDA / RD New Program Initiatives Branch
Bldg 105 E, FC-22, Post D-2
4300 Goodfellow Blvd
St Louis MO 63120-1703

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3. I encourage **Petitioner Baune and the collection agency** to work together to **establish a repayment schedule** rather than immediately proceeding with garnishment, even though this Decision authorizes garnishment, up to 15% of Petitioner Baune’s disposable pay. *See* 31 C.F.R. § 285.11. Petitioner Baune, obviously, will have to make herself available to the collection agency if she wants to negotiate. *See* paragraph 12.

4. This is Petitioner Baune’s case (she filed the Petition), and in addition to failing to be available for the hearing, Petitioner Baune failed to file with the Hearing Clerk any information. Petitioner Baune’s deadline for that was October 22, 2010.

Summary of the Facts Presented

5. Petitioner Baune owes to USDA Rural Development a balance of **\$40,915.55** in repayment of a United States Department of Agriculture / Rural Housing Service **Guarantee** (see RX-1, esp. p. 2) for a loan made by Home State Bank in 2005 for a home in Minnesota, the balance of which is now unsecured (“the debt”). See USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed October 1, 2010), which are admitted into evidence, together with the testimony of Ms. Kimball.

6. This Guarantee establishes an **independent** obligation of Petitioner Baune, “I certify and acknowledge that if the Agency pays a loss claim on the requested loan to the lender, I will reimburse the Agency for that amount. If I do not, the Agency will use all remedies available to it, including those under the Debt Collection Improvement Act, to recover on the Federal debt directly from me. The Agency’s right to collect is independent of the lender’s right to collect under the guaranteed note and will not be affected by any release by the lender of my obligation to repay the loan. Any Agency collection under this paragraph will not be shared with the lender.” See the **Guarantee**, RX-1, esp. p. 2.

7. The amount that USDA Rural Development paid to the lender was \$49,334.44. Consequently, that amount is what Petitioner Baune owed to USDA Rural Development under the **Guarantee**, after proceeds from sale of the property had been applied to the debt in 2008. RX-3.

8. The amount Petitioner Baune borrowed was \$118,830.00 in 2005. After the default and subsequent sale in 2008, \$115,587.44 was the Unpaid Principal Balance. Accrued interest owed, expenses, including advances to pay taxes and insurance, property preservation and maintenance costs, closing costs, attorneys fees and costs, and the like, had to be added to the Unpaid Principal Balance, yielding total debt of \$140,129.67. RX-3. After subtracting from the total debt, \$87,950.00 sale proceeds, and additional “recoveries/credits/reductions” in Petitioner Baune’s favor, the remaining debt was \$49,334.44. RX-3. An adjustment to the unpaid principal balance added \$1,108.00 to the remaining debt. Payments have reduced the debt to **\$40,915.55**.

9. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$40,915.55** would increase the current balance by \$11,456.36, to \$52,371.91. See USDA Rural Development Exhibits, esp. RX-6.

10. Petitioner Baune failed to file a Consumer Debtor Financial Statement or pay information or other financial information or anything. Consequently I have no evidence to evaluate for the factors to be considered under 31 C.F.R. § 285.11, and I must presume that Petitioner Baune’s disposable pay supports garnishment, up to 15% of Petitioner Baune’s disposable pay. 31 C.F.R. § 285.11.

11. Petitioner Baune is responsible and able to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

12. Garnishment up to 15% of Petitioner Baune's disposable pay is authorized. *See* paragraph 8. I encourage **Petitioner Baune and the collection agency to negotiate promptly** the repayment of the debt. Petitioner Baune, this will require **you** to telephone the collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Baune, you may ask that the debt be apportioned separately to you and the co-borrower; you may choose to offer to the collection agency to compromise the debt for an amount you are able to pay, to settle the claim for less.

Findings, Analysis and Conclusions

13. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Baune and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.

14. Petitioner Baune owes the debt described in paragraphs 5, 6, 7, 8 and 9.

15. Garnishment **up to 15%** of Petitioner Baune's disposable pay is authorized. 31 C.F.R. § 285.11.

16. Repayment of the debt may also occur through **offset** of Petitioner Baune's **income tax refunds** or other **Federal monies** payable to the order of Ms. Baune.

Order

17. Until the debt is repaid, Petitioner Baune shall give notice to USDA Rural Development or those collecting on its behalf, of any changes in her mailing address; delivery address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).

18. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment, **up to 15%** of Petitioner Baune's disposable pay. 31 C.F.R. § 285.11.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 2nd day of December 2010

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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