

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
Rhonda Khay Williams-Birdow,) **AWG Docket No. 11-0083**
Petitioner) **Decision and Order**

1. The hearing by telephone was held as scheduled on February 17, 2011. Ms. Rhonda Khay Williams-Birdow, formerly known as Rhonda K. Williams (“Petitioner Williams-Birdow”), did not participate. (Petitioner Williams-Birdow did not answer the mobile phone number provided in her Hearing Request; she did not provide any other phone number.) Petitioner Williams-Birdow, I see that you requested the Hearing to be “After 5 pm Texas Time,” and that you wrote: PLEASE DO NOT TELEPHONE CALL ME AT MY PLACE OF EMPLOYMENT.”

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

Mary E. Kimball, Branch Accountant
USDA / RD New Program Initiatives Branch
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4300 Goodfellow Blvd
St Louis MO 63120-1703

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Summary of the Facts Presented

3. Petitioner Williams-Birdow owes to USDA Rural Development a balance of **\$25,452.77** (as of January 13, 2011) in repayment of two United States Department of Agriculture Farmers Home Administration loans, one *assumed* in 1997, and one *made* in 1997, for a home in Texas. The balance is now unsecured (“the debt”). See USDA Rural

Development Exhibits, plus Narrative, Witness & Exhibit List (filed January 24, 2011), which are admitted into evidence, together with the testimony of Mary Kimball.

4. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$25,452.77** would increase the current balance by \$7,126.78, to \$32,579.55. *See* USDA Rural Development Exhibits, esp. RX 8.

5. The amount Petitioner Williams-Birdow borrowed in 1997 was \$47,594.35 (\$32,244.35 loan assumed, plus \$15,350.00 loan made). By the time of the foreclosure sale in 2009, that debt had grown to \$61,117.72:

\$ 42,434.32	Principal Balance prior to foreclosure sale
\$ 9,524.43	Interest Balance prior to foreclosure sale
<u>\$ 9,158.97</u>	Fees Balance (including interest on fees) prior to foreclosure sale
\$ 61,117.72	Total Amount Due prior to foreclosure sale
=====	
- <u>\$ 35,100.00</u>	Proceeds from foreclosure sale
\$ 26,017.72	Unpaid in 2009

RX 7 and USDA Rural Development Narrative.

The foreclosure sale in 2009 yielded \$35,100.00. The remaining balance of the debt was \$26,017.72 after those funds were applied. Another \$564.95 applied to the debt since then leaves **\$25,452.77** unpaid now (excluding the potential remaining collection fees). *See* RX 7 and USDA Rural Development Narrative.

6. Evidence is required for me to determine whether Petitioner Williams-Birdow's disposable pay supports garnishment without creating hardship. 31 C.F.R. § 285.11. Petitioner Williams-Birdow failed to file a completed "Consumer Debtor Financial Statement" or anything in response to my Order dated January 11, 2011, so I cannot calculate Petitioner Williams-Birdow's reasonable and necessary living expenses. I do have Petitioner Williams-Birdow's Hearing Request with attachments. [Mr. Mark Anthony Williams did **not** sign the Assumption Agreement or the Promissory Note, so he is **not** legally obligated to USDA Rural Development. Petitioner Williams-Birdow, you may wish to consult a lawyer licensed to practice in Texas to help you determine whether Mr. Williams is legally obligated to you, to help you repay "the debt" (*see* paragraph 3). The terms of your marriage and dissolution of marriage may be a factor.]

7. With no testimony from Petitioner Williams-Birdow and no current pay stub, I cannot calculate with precision Petitioner Williams-Birdow's current disposable pay (after

subtracting income tax, social security, Medicare, health insurance, and any other “eligible” withholding from her gross pay). I do have data from garnishments in 2010 (RX 7, p. 3) to help me determine whether Petitioner Williams-Birdow’s disposable pay supports garnishment without creating hardship. I estimate Petitioner Williams-Birdow’s disposable pay to be less than \$1,500.00 per month (based on her Hearing Request attachments and RX 7, p. 3). The approximate amount that could be garnished in repayment of the USDA Rural Development debt, 15% of disposable pay, may be roughly \$200.00 to \$225.00 per month (roughly \$100.00 every 2 weeks). In evaluating the factors to be considered under 31 C.F.R. § 285.11, I find that Petitioner Williams-Birdow probably cannot withstand garnishment in that amount without hardship.

8. To prevent hardship, potential garnishment to repay “the debt” (*see* paragraph 3) must be limited to zero per cent (0%) of Petitioner Williams-Birdow’s disposable pay through August 2011; and no more than 5% of Petitioner Williams-Birdow’s disposable pay thereafter. 31 C.F.R. § 285.11.

9. Petitioner Williams-Birdow is responsible and willing and able to negotiate the repayment of the debt with Treasury’s collection agency.

Discussion

10. Through August 2011, NO garnishment is authorized. Thereafter, garnishment up to 5% of Petitioner Williams-Birdow’s disposable pay is authorized. *See* paragraphs 6, 7 and 8. I encourage **Petitioner Williams-Birdow and the collection agency to negotiate promptly** the repayment of the debt. Petitioner Williams-Birdow, 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 Williams-Birdow, 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

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

12. Petitioner Williams-Birdow owes the debt described in paragraphs 3, 4 and 5.

13. **Through August 2011, NO garnishment is authorized.** Thereafter, garnishment **up to 5%** of Petitioner Williams-Birdow’s disposable pay is authorized. 31 C.F.R. § 285.11.

14. This Decision does not prevent repayment of the debt through *offset* of Petitioner Williams-Birdow's **income tax refunds** or other **Federal monies** payable to the order of Ms. Williams-Birdow.

Order

15. Until the debt is repaid, Petitioner Williams-Birdow 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).

16. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment **through August 2011**. Thereafter, USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment, **up to 5%** of Petitioner Williams-Birdow'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 18th day of February 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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