

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) **AWG Docket No. 11-0137**
Camilla S. Ray, f/k/a)
Camilla S. Nadi,)
)
Petitioner) **Decision and Order**

1. The hearing by telephone was held on April 12 and April 18, 2011. Ms. Camilla S. Ray, formerly known as Camilla S. Nadi (“Petitioner Ray”), participated, representing herself (participated *pro se*).

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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Summary of the Facts Presented

3. Petitioner Ray owes to USDA Rural Development a balance of **\$65,597.47** (as of February 17, 2011) in repayment of a United States Department of Agriculture Rural Housing Service loan, made in 2005, for a home in Georgia.¹ The balance is now unsecured (“the debt”). See USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed on March 10 and May 3, 2011), which are admitted into evidence, together with

¹ Rural Housing Service is a part of USDA Rural Development.

the testimony of Mary Kimball. [The May 3 filing included Additional Narrative and Exhibits RX 9 and RX 10.]

4. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$65,597.47** would increase the balance by \$18,367.29, to \$83,964.76. *See* USDA Rural Development Exhibits, esp. RX 8.

5. The amount Petitioner Ray borrowed from USDA Rural Housing Service in 2005 was \$120,137.50. Thereafter, Petitioner Ray benefitted from a 2-year Moratorium. When the Moratorium expired, Petitioner Ray re-amortized her account, on May 23, 2008. The re-amortization allowed Petitioner Ray to become current on her debt, by transferring the delinquent amount to principal. The principal amount due became \$130,108.55. *See* USDA Rural Development Narrative. Petitioner Ray testified she had no means to prevent the loan from again becoming delinquent, as is explained more fully below.

6. Petitioner Ray's Hearing Request filed February 7, 2011, states that she does not owe the debt; or in the alternative she does not owe the full amount of the debt; for the reason that: "I didn't receive due process when my home foreclosed. I don't agree with the amount owed. I want to inspect the records." Petitioner Ray's Narrative and Exhibits, including her Consumer Debtor Financial Statement (filed on March 30 and March 31, 2011) are admitted into evidence, together with the testimony of Petitioner Ray.

7. Petitioner Ray testified that her [REDACTED] per year earnings were insufficient, and that the court-ordered child support due her was not always delivered to her. She testified that child support of [REDACTED] per year that should have been paid to her ([REDACTED] per year when she applied, according to Petitioner Ray's Narrative and PX 1), was unreliable and should not have been considered in qualifying her for the loan. Petitioner Ray's excellently written Narrative explains that, although she desperately wanted a home for her two children, she never did have the means to make the mortgage payments. Petitioner Ray testified to her health problems in addition to low wages and lack of child support.

8. Petitioner Ray testified that not all the notices pertaining to the delinquency reached her. This was a time when her mother was having heart surgery; her grandmother died; and custody of her son was at issue. The mailings sent to Petitioner Ray at home (the property that was security for the debt) may not have reached her (she believed September 2009 was about the last date she was in the home), because the mailbox was knocked down an average of once every 2 weeks. Petitioner Ray testified that she provided her mother's address in Richmond, Georgia as a mailing address to reach her, in care of her mother; and her mother may not have given her all of the mailings sent there.

9. Petitioner Ray testified that her realtor was not able to accomplish a short sale, and cites lack of cooperation from USDA Rural Development. *See* Petitioner Ray's Narrative.

On September 14, 2009, USDA Rural Development received Petitioner Ray's consent letter to release information to Carmen Cribbs (the realtor). RX 9, p. 31. Petitioner Ray testified that after she got the \$3,661.64 demand (letter dated July 13, 2009, RX 5, p. 1), and there were "For Sale" signs everywhere, she had contacted the realtor. The evidence does not show why Petitioner Ray through her realtor was not able to accomplish a short sale; there is no record of an offer to buy being presented to USDA Rural Development. Petitioner Ray's Narrative does mention her realtor's comment on the bad economy.

10. Petitioner Ray acknowledges in her Narrative that there was a time when a payment of \$3,600 (to be precise, \$3,661.64) would have stopped the foreclosure, and Petitioner Ray testified she had no way to pay. Ms. Kimball testified that Petitioner Ray had received all the advantages and benefits that USDA Rural Housing Service could offer. On May 10, 2010, USDA Rural Development sent the notice to vacate letter by certified mail to Petitioner Ray. RX 9, p. 20. *See* Notice of Foreclosure and Demand to Vacate Real Estate, RX 6, p. 12. Numerous notices had been sent to Petitioner Ray. The foreclosure sale occurred on June 1, 2010, yielding \$75,176.00 to be applied to the \$140,773.47 balance, after which the balance still owed on the debt was **\$65,597.47**. RX 9, p. 5. RX 7. RX 6.

11. Petitioner Ray challenges the low price paid for the home, asserting that the fair market value of the home was \$135,138.00 in 2010 (based on Assessor's records) (see Exhibits PX-16, PX-17, & PX-18). "It is not my fault that they didn't seek a fair amount (bid) for the home." Petitioner Ray's Narrative, p. 2. As I look at the Assessor's records, without further evidence, I cannot assume that the Assessor's values had been updated to reflect current values. Additionally, distressed sales such as the foreclosure sale here are not expected to yield high prices. The home was well-advertised prior to the foreclosure auction, a minimum bid was established (the successful bid, which was the highest bid, was \$1.00 higher than the minimum bid required), and the auction process itself ("Sale Under Power"), well-documented in RX 5 and RX 6, satisfies the fairness requirement.

12. Petitioner Ray asserts that USDA Rural Development failed to comply with Georgia law regarding establishment of a deficiency. Petitioner Ray has done an excellent job of arguing her case, not only on this issue, but on all the issues. Nevertheless, after careful consideration of the evidence and the law, including the law concerning administrative collections such as this, I find that Petitioner Ray did receive due process, that USDA Rural Development treated Petitioner Ray fairly, that an agency of the United States government collecting administratively has rules that differ from those of the various jurisdictions in which the loans were made, and that Petitioner Ray owes the balance of **\$65,597.47** (excluding potential collection fees), as of February 17, 2011.

13. Now that I have determined that Petitioner Ray owes the debt, I consider the evidence to determine whether Petitioner Ray's disposable pay supports garnishment, up to 15% of her disposable pay, without creating hardship. 31 C.F.R. § 285.11. Petitioner Ray's

current disposable pay (after subtracting income tax, social security, Medicare, health insurance, and any other “eligible” withholding from her gross pay) is zero (-0-). Petitioner Ray owes money that she does not have, not only for the USDA Rural Development debt, but also for medical care, for student loans, for her car, and for miscellaneous other items. Petitioner Ray’s reasonable and necessary living expenses are largely met by her husband, and he is not obligated to pay the USDA Rural Development debt. In evaluating the factors to be considered under 31 C.F.R. § 285.11, I find that Petitioner Ray cannot withstand garnishment at this time without hardship.

14. To prevent hardship, potential garnishment to repay “the debt” (*see* paragraph 3) must be limited to zero per cent (0%) of Petitioner Ray’s disposable pay through May 2012; and no more than 3% of Petitioner Ray’s disposable pay thereafter. 31 C.F.R. § 285.11.

15. Petitioner Ray indicates that she has no means of paying under a repayment agreement; consequently she will not negotiate the repayment of the debt with Treasury’s collection agency.

Discussion

16. Through May 2012, NO garnishment is authorized. Thereafter, garnishment up to 3% of Petitioner Ray’s disposable pay is authorized. *See* paragraph 13. If Petitioner Ray does decide to negotiate the repayment of the debt, this will require Petitioner Ray to telephone Treasury’s collection agency. The toll-free number is **1-888-826-3127**. Petitioner Ray, 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

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

18. Petitioner Ray owes the debt described in paragraphs 3, 4 5, 10, and 12.

19. **Through May 2012, NO garnishment is authorized.** Thereafter, garnishment **up to 3%** of Petitioner Ray’s disposable pay is authorized. 31 C.F.R. § 285.11.

20. This Decision does not prevent repayment of the debt through *offset* of Petitioner Ray’s **income tax refunds** or other **Federal monies** payable to the order of Ms. Ray.

Order

21. Until the debt is repaid, Petitioner Ray 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).

22. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment **through May 2012**. Thereafter, USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment, **up to 3%** of Petitioner Ray'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. Petitioner Ray's copy shall be sent not only to the address the Hearing Clerk has been using, **but also to the address on her Hearing Request** (and on her Consumer Debtor Financial Statement, and on her 2010 income tax return), as she testified it is her correct address.

Done at Washington, D.C.
this 24th day of May 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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