

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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|---------------------------|---|-------------------------------|
| In re: |) | |
| |) | |
| Rebekah J. Collins, n/k/a |) | AWG Docket No. 11-0292 |
| |) | |
| Rebekah J. Trombley, |) | |
| |) | |
| Petitioner |) | Decision and Order |

1. The hearing by telephone was held as scheduled on August 23, 2011. Ms. Rebekah J. Trombley, formerly known as Rebekah J. Collins (“Petitioner Trombley”), did not participate. (Petitioner Trombley did not participate by telephone: no one answered the phone number she provided in her Hearing Request; no one returned the message(s) left on the recording; Petitioner Trombley did not provide any other phone number where she could be reached.)

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
Bldg 105 E, FC-22, Post D-2
4300 Goodfellow Blvd
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Summary of the Facts Presented

3. Petitioner Trombley owes to USDA Rural Development a balance of **\$49,967.44** in repayment of two United States Department of Agriculture Farmers Home Administration loans, one assumed and one made in 1990, for a home in Maine. The balance is now unsecured (“the debt”), and is calculated as of August 4, 2011 on one loan; and as of July

15, 2011 on the other loan. *See* USDA Rural Development Exhibits, esp. RX 6, pp. 1, 2, plus Narrative, Witness & Exhibit List (filed August 5, 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 **\$49,967.44** would increase the current balance by \$13,990.89, to \$63,958.33. [This includes both loans.] *See* USDA Rural Development Exhibits, esp. RX 6, pp. 1, 2.

5. The amount Petitioner Trombley (then Collins) borrowed in 1990 was \$64,376.22 (\$33,500.00 on one loan, \$30,876.22 on the other loan). In 1994, Petitioner re-amortized her accounts, which allowed her to become current, by adding the amount that was delinquent to the principal. By the time of the foreclosure sale in 1998, the debt had grown to \$97,887.33:

| | |
|-----------------------|---|
| \$ 81,736.94 | Principal Balance prior to foreclosure sale |
| \$ 12,391.20 | Interest Balance prior to foreclosure sale |
| <u>\$ 3,759.19</u> | Fees Balance prior to foreclosure sale |
| | |
| \$ 97,887.33 | Total Amount Due prior to foreclosure sale |
| <u>=====</u> | |
| - <u>\$ 40,000.00</u> | Proceeds from foreclosure sale |
| | |
| \$ 57,887.33 | Unpaid after sale in 1998 |

RX 5 and USDA Rural Development Narrative.

An additional \$1,450.00 pre-foreclosure fee was added; then, \$9,369.89 was applied toward paying the debt, leaving **\$49,967.44** unpaid now (excluding the potential remaining collection fees). *See* RX 5, and USDA Rural Development Narrative.

6. Petitioner Trombley's Hearing Request was late. The last collection shown was in 2008. RX 5, p. 2. Petitioner Trombley's pay has apparently not been garnished even though her Hearing Request was late.

7. Petitioner Trombley wrote in her Hearing Request:

"I do not owe the debt . . . ex husband owes debt"

See Petitioner Trombley's Hearing Request. Petitioner Trombley provided excerpts of a Property Settlement Agreement (signature page not included), showing that her co-borrower, Roderick Collins (her ex husband), was to be responsible for the Farmers Home

Administration debt and was to have re-financed or sold the home during the year following signing of the Agreement. In 1996, Petitioner Trombley (then Rebekah J. Collins, also known as Rebekah J. Duncan), released all her claim on the home, signing a Release Deed, and making clear that the debt belonged to Roderick Collins. Roderick Collins failed to meet his obligations regarding the debt. Nevertheless, USDA Rural Development is still entitled to collect from Petitioner Trombley. When Petitioner Trombley entered into the borrowing transaction with her co-borrower Roderick Collins, in 1990, certain responsibilities were fixed, as to each of them, that were addressed but not erased by the Property Settlement Agreement and the Release Deed.

8. According to the Narrative filed August 5, 2011, Roderick Collins filed for Chapter 7 bankruptcy in 2002, and his obligation to pay the debt was discharged on January 1, 2003. [Petitioner Trombley may want to consult with a lawyer with bankruptcy expertise to determine whether she has a right to recover from Roderick Collins, money collected from her on the debt, in spite of his bankruptcy discharge. Petitioner Trombley may want to consult with a lawyer with bankruptcy expertise to determine all of her own options.]

9. Petitioner Trombley failed to file a completed “Consumer Debtor Financial Statement” or anything in response to my Order dated August 5, 2011, so I cannot calculate either Petitioner Trombley’s income or her reasonable and necessary living expenses. Evidence is required for me to determine whether Petitioner Trombley’s disposable pay supports garnishment without creating hardship. 31 C.F.R. § 285.11. (Disposable pay is gross pay minus income tax, Social Security, Medicare, and health insurance withholding; and in certain situations minus other employee benefits contributions that are required to be withheld.)

10. With no testimony from Petitioner Trombley and no financial information, I cannot calculate Petitioner Trombley’s current disposable pay. I cannot evaluate the factors to be considered under 31 C.F.R. § 285.11, so I must assume that Petitioner Trombley can withstand garnishment, up to 15% of her disposable pay, without financial hardship.

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

Discussion

12. I encourage **Petitioner Trombley and the Treasury’s collection agency to negotiate promptly** the repayment of the debt. Petitioner Trombley, 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 Trombley, 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 Trombley and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.
14. Petitioner Trombley owes the debt described in paragraphs 3, 4 and 5.
15. **Garnishment is authorized, up to 15% of Petitioner Trombley's disposable pay.** 31 C.F.R. § 285.11.
16. Repayment of the debt may also occur through *offset* of Petitioner Trombley's **income tax refunds** or other **Federal monies** payable to the order of Ms. Trombley. [Petitioner Trombley, if you file a joint tax return and a part of the refund belongs to your husband, call the Treasury toll-free number to inquire about the "injured spouse." See paragraph 12.]

Order

17. Until the debt is repaid, Petitioner Trombley 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 Trombley'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 26th day of August 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
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