

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
John Costa)	Docket No. 12-0077
)	
Petitioner)	Decision and Order

Appearances:

none, for the Petitioner John Costa, also known as John Costa III; and

Michelle Tanner, Appeals Coordinator, United States Department of Agriculture, Rural Development, Centralized Servicing Center, St. Louis, Missouri, for the Respondent (USDA Rural Development).

1. The hearing by telephone was held as scheduled on January 31, 2012. John Costa, also known as John Costa III (“Petitioner Costa”), did not participate. (Petitioner Costa did not participate by telephone: there was no telephone number for Petitioner Costa provided in his Hearing Request; and in response to my Order issued December 23, 2011, Petitioner Costa provided no telephone number where he could be reached for the hearing by telephone.)

2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and is represented by Michelle Tanner.

Summary of the Facts Presented

3. Petitioner Costa owes to USDA Rural Development a balance of **\$40,304.02** (as of December 16, 2011) in repayment of a United States Department of Agriculture / Rural Development / Rural Housing Service *Guarantee* (see RX 1, esp. p. 2) for a loan made on August 12, 2004, by Citizens First National Bank for a home in Illinois, the balance of which is now unsecured (“the debt”). [The loan balance will change, because garnishment is ongoing (RX 9, p. 2); the balance will likely have been reduced by the time I sign this Decision.] See USDA Rural Development Exhibits RX 1 through RX 9, plus Narrative,

Witness & Exhibit List (filed December 29, 2011), which are admitted into evidence, together with the testimony of Michelle Tanner.

4. This *Guarantee* establishes an **independent** obligation of Petitioner Costa, “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.” RX 1, p. 2.

5. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$40,304.02** would increase the current balance by \$11,285.13, to \$51,589.15. *See* USDA Rural Development Exhibits, esp. RX 9, p. 3.

6. The amount Petitioner Costa borrowed was \$87,000.00 on August 12, 2004. RX 2. Foreclosure was initiated in 2009. A foreclosure sale was scheduled and held on October 16, 2009 at the La Salle County Courthouse. Citizens First National Bank acquired the property back into inventory for the bid amount of \$60,000.00. Citizens First National Bank placed the home “as is” on the market for resale. The Suggested List Price per the Brokers Price Opinion (BPO) was \$37,000.00. The property sold to a third party for the amount of \$35,500.00 on March 15, 2010. After \$5,482.45 of foreclosure costs was subtracted, the net proceeds from sale of the home, available to apply on the loan, were \$30,017.55.

7. Mr. Costa stated in his Hearing Request: “I believe my home was taken wrongfully and when sold was within 30 days of myself moving out.” But Mr. Costa owed \$90,725.13 on the loan with Citizens First National Bank. The detail is shown on RX 9, p. 1. In addition to principal (\$82,185.88), there was interest (\$6,287.22), and there were fees and protective advances (\$2,252.03). These three items total \$90,725.13. RX 9, p. 1 and USDA Rural Development Narrative. So when the \$30,017.55 proceeds from sale of the home were applied on the loan, there was still a balance of \$60,707.58. A credit (\$720.00) was applied, reducing Citizens First National Bank’s loss to \$59,987.58. RX 9, p. 1.

8. USDA Rural Development paid Citizens First National Bank \$55,556.94 for its loss on October 28, 2010. RX 7, p. 5, and USDA Rural Development Narrative. Thus \$55,556.94, the amount USDA Rural Development paid, is the amount USDA Rural Development recovers from Petitioner Costa under the *Guarantee*.

9. Collections from Treasury applied on the debt after collection fees are subtracted (\$15,252.92, from Petitioner Costa, including *offset* and garnishment) leave **\$40,304.02**

unpaid as of December 16, 2011 (excluding the potential remaining collection fees). *See* RX 9, pp.1-2, and USDA Rural Development Narrative.

10. Although my Order dated December 23, 2011, required financial disclosure from Petitioner Costa, such as filing a Consumer Debtor Financial Statement, he filed nothing. Thus I cannot calculate Petitioner Costa's current disposable pay. (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.) There is no evidence before me to use to consider the factors to be considered under 31 C.F.R. § 285.11. In other words, I cannot tell whether garnishment to repay "the debt" (*see* paragraph 3) in the amount of 15% of Petitioner Costa's disposable pay creates a financial hardship.

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

Discussion

12. Garnishment of Petitioner Costa's disposable pay is authorized. I encourage **Petitioner Costa and Treasury's collection agency to negotiate promptly** the repayment of the debt. Petitioner Costa, this will require **you** to telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Costa, 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. Petitioner Costa, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

14. Petitioner Costa owes the debt described in paragraphs 3 through 9.

15. **Garnishment up to 15% of Petitioner Costa's disposable pay** is authorized. There is no evidence that financial hardship has been created by the garnishment. 31 C.F.R. § 285.11.

16. **No refund** to Petitioner Costa of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.

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

Order

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

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

20. I am **NOT** ordering any amounts already collected prior to implementation of this Decision, whether through *offset* or garnishment of Petitioner Costa's pay, to be returned to Petitioner Costa.

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

Done at Washington, D.C.
this 13th day of February 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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