

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Matthew M. Earl,)	Docket No. 12-0047
)	
Petitioner)	Decision and Order

Appearances:

Mark T. Hamby, Esq., Bonham & Howard, P.L.L.C., Tulsa, Oklahoma, for the Petitioner (Petitioner Earl); 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 on January 19, 2012. Matthew M. Earl, the Petitioner (“Petitioner Earl”), participated, represented by Mark T. Hamby, Esq.
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 Earl’s Exhibits PX 1 through PX 4, plus completed “Consumer Debtor Financial Statement,” plus Narrative, Witness & Exhibit List, were filed on January 17, 2012, and are admitted into evidence, together with the testimony of Petitioner Earl, together with his Hearing Request and all accompanying documents (filed November 4, 2011). Also admitted into evidence are Petitioner Earl’s documents filed post-hearing on January 26, 2012: Exhibit PX 5 with attached 4 pages of payroll records from Petitioner Earl’s employer, plus Mark Hamby’s cover letter.

4. USDA Rural Development’s Exhibits RX 1 through RX 15, plus Narrative, Witness & Exhibit List, were filed on December 20, 2011, and are admitted into evidence, together with the testimony of Michelle Tanner. Also admitted into evidence are USDA Rural

Development's exhibits filed post-hearing on January 26, 2012: Exhibits RX 16 through RX 20, plus Michelle Tanner's Exhibit List.

5. Petitioner Earl borrowed to buy a home in Oklahoma. Petitioner Earl bought the home in Oklahoma in 2006, and borrowed \$73,979.00 to pay for it. RX 3.

6. USDA Rural Development's position is that Petitioner Earl owes to USDA Rural Development **\$32,979.14** (as of January 24, 2012), in repayment of the United States Department of Agriculture / Rural Development / Rural Housing Service *Guarantee* (see RX 1, esp. p. 2) for the loan made in 2006 ("the debt"). The loan was made by Rooms and Clark Mortgage Corp. and went to American Southwest Mortgage Corp. and to Chase Manhattan Mortgage; the *Guarantee* remained in force. After careful review of all of the evidence, I agree with USDA Rural Development's position. [The loan balance has no doubt changed from the January 24, 2012 balance of \$32,979.14 (excluding collection costs), because garnishment is ongoing (see RX 15, p. 1; and RX 20, p. 1); the balance will have therefore been reduced and will continue to change. As will be seen later in this Decision, the balance will increase when amounts taken from Petitioner Earl's pay are returned to him.]

7. The *Guarantee* (RX 3) establishes an **independent** obligation of Petitioner Earl, "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.

8. The Due Date of the last payment made was April 1, 2008. RX 8, p. 2. The foreclosure was initiated on September 26, 2008. RX 8, p. 2. The lender, Chase, acquired the home, which became REO (Real Estate Owned), at the Sheriff's sale on July 7, 2009. Chase (Chase Home Finance LLC) bid \$51,000.00, which, according to the language of the District Court Judge in his Order Confirming Sheriff's Sale, was "two-thirds (2/3rds) or more of the appraised value of said property [the appraisal relied upon came in at \$72,100.00 (PX 2, PX 3)]. The Court finds that said sale was, in all respects, made in conformity with the statutes of the State of Oklahoma in such cases made and provided." PX 3.

9. USDA Rural Development reimbursed the lender \$35,167.19 on April 21, 2010, which is the amount USDA Rural Development seeks to recover from Petitioner Earl under the *Guarantee*. RX 14. There are a number of appraisals, and Petitioner Earl requests evaluation of them.

10. Evaluating appraisals is a bit of an art. I begin with the appraisal as of August 13, 2009. This appraisal is at RX 17. The foreclosure sale had taken place about a month and a week earlier (July 7, 2009). There are 3 values referenced in this appraisal (RX 17); two are sales comparison approaches, one “AS REPAIRED” and one “AS IS”; and the third is a cost approach:

(a) By cost approach, the home’s value was \$78,661.00. When rapid resale is the objective, the cost approach is not the method chosen. The appraisal stated, “Market approach is felt most indicative of actual buyer & seller reactions in the market.”

(b) By sales comparison approach, IF \$7,800.00 of needed repairs were done, the “AS REPAIRED” value was \$58,050.00 or \$58,000.00.

(c) By sales comparison approach, the “AS IS” value was \$58,000.00 minus \$7,800.00 equals \$50,200.00.

Next, I focus on the Broker Price Opinion (BPO), dated August 21, 2009. This appraisal is at RX 18, pp. 2-5. This appraisal shows a 3 to 6 month sales price range from \$76,000.00 (high) to \$65,000.00 (low). RX 18, p. 2. This Opinion recommends \$550.00 in repairs (RX 18, p. 3) and recommends \$70,000.00 as the List Price, after concluding that \$70,000.00 was the 90-120 day Repair Price. This Opinion shows \$65,000.00 as the 90-120 day As-Is Price.

The calculations made by USDA Rural Development are shown on the Property Disposition Plan Worksheet, dated August 26, 2009. RX 18, p. 1. Both of the foregoing appraisals are included in the Property Value Summary of the Worksheet. RX 18, p. 1. The Marketing Strategy selected is “As-is”; the Suggested List Price is \$65,000.00; the Minimum Acceptable Price is \$55,250.00.

11. What happened then is, the home did not sell. RX 8, p. 2. The Original List Date was August 28, 2009; the Original List Price was \$68,000.00. RX 8, p. 2. The Final List Date was January 27, 2010; the Final List Price was \$58,400.00. RX 8, p. 2. The Marketing Period Expiration was January 24, 2010. RX 8, p. 2. USDA Rural Development then obtained the Appraisal found at RX-16. The appraisal shows the home’s market value to be \$50,000.00 as of February 21, 2010, based on a Sales Comparison Approach. RX 16, p. 4. [The Cost Approach shows a \$90,272.00 value; again, when rapid resale is the objective, the cost approach is not the method chosen.] Thus, the \$50,000.00 RHS Liquidation Appraised Value and the February 21, 2010 RHS Liquidation Appraised Date are shown on RX 8, p. 2.

12. Under these circumstances, I find the \$50,000.00 Liquidation Value to be reasonable. Paragraphs 8-11. As Michelle Tanner testified, there are costs associated with keeping a property on the market. But, happily, the home did sell for a price higher than the \$50,000.00 liquidation value, and Petitioner Earl was given credit for that. *See next paragraph, and see RX 19.*

13. Originally, USDA Rural Development used the \$50,000.00 Liquidation Value of the Home. *See* RX 9, and RX 8. Using the \$50,000.00 Liquidation Value, USDA Rural Development expected to pay to Chase Home Finance LLC \$39,561.69. RX 9. Instead, the loss claim amount was \$35,167.19, paid by USDA Rural Development to the lender on April 21, 2010 (RX 14). RX 14, p. 2.

14. The following summary of USDA Rural Development's calculation of its \$35,167.19 reimbursement to the lender is found at RX 14, p. 2. The detail to support RX 14 comes in part from RX 8, which became incomplete when Chase sold the home for \$55,500.00, and in part from RX 13, which supplements RX 8, to show the Recovery:

\$ 72,055.08	Unpaid Principal Balance
\$ 8,912.41	Unpaid Interest Balance
\$ 2,041.08	Protective advances to pay unpaid real estate taxes and unpaid insurance premiums, plus \$68.74 interest on protective advances
<u>\$ 83,008.57</u>	
+ \$ 9,556.30	Lender Expenses to Sell Property (RX 14, p. 2 for detail)
\$ 92,564.87	Total Debt Charged to Petitioner Earl
	=====
- \$ 50,000.00	Liquidation Value of the Home ¹
\$ 42,564.87	Amount Due Before Credits, Refunds, Recovery
	=====
- \$ 3,003.18	Credits and Refunds
- \$ 4,394.50	Recovery [the portion of the \$5,170.00 that went to USDA Rural Development; the other \$775.50 went to Chase. RX 13]
\$ 35,167.19	
	=====

RX 14, p. 2, USDA Rural Development Narrative, and testimony.

¹ But *see* RX 13, p. 1. The lender, Chase, sold the home for greater than the liquidation value, and Petitioner Earl was given credit for the better price. *See* Settlement Statement (RX 19), showing the home sold for \$55,500.00 on April 23, 2010. After an allowance for \$330.00 additional commission, the \$5,170.00 that resulted from the difference between the Liquidation Appraised Value and the Adjusted Sales Price was apportioned between USDA Rural Development and the lender Chase. RX 13, p. 2.

15. Petitioner Earl requests evaluation of the lender costs that USDA Rural Development paid, and that he is consequently required to repay. He questions especially whether he is paying double when liable for both the \$5,935.00 Estimated Sale Expenses (11.87% of liquidation value) (RX 14, p. 2) and a sales commission. The Settlement Statement (RX 19) details the \$6,791.04 reduction to the Seller from the \$55,500.00 sale price. I am persuaded by the evidence as a whole, including Michelle Tanner's testimony, that Petitioner Earl is not paying double for any of the costs associated with (a) the foreclosure, followed by (b) sale of the REO.

16. Collections from Treasury (from Petitioner Earl, through garnishment) applied to the debt (after collection fees are subtracted) leave **\$32,979.14** unpaid as of January 24, 2012 (excluding the potential remaining collection fees). See RX 20, especially p. 1.

17. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$32,979.14**, would increase the balance by \$9,234.15, to \$42,213.29. RX 20, especially p. 2.

18. Petitioner Earl moved to Sand Springs, Oklahoma to maintain shared custody of his two children. PX 1, p. 8. The home did not sell. Petitioner Earl was unable to obtain concessions from Chase. PX 1. Petitioner Earl is now left with this large debt and difficulty in meeting his family's requirements. At present he is unable to provide his wife's health insurance, because he cannot afford to, and in December he took his daughter out of pre-kindergarten classes because he cannot afford the classes.

19. Petitioner Earl works as a laborer, making [REDACTED] per hour. He earns overtime pay on occasion. Petitioner Earl's pay stubs are excellently prepared to allow me to calculate his disposable pay (within the meaning of 31 C.F.R. § 285.11). For example, I calculate Petitioner Earl's disposable pay during 2011 as follows. From Petitioner Earl's [REDACTED] annual gross pay, I subtract two amounts: [REDACTED] in annual health insurance deductions and [REDACTED] in annual payroll tax deductions.] See PX 5. The pay stub itself shows the first subtraction: [REDACTED] is what is left after the health insurance deductions are subtracted (including health, dental, FSA Med, and vision). The second subtraction (of annual income taxes, Social Security, and Medicare) yields [REDACTED] annual disposable pay. [Disposable income 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.] Thus, Petitioner Earl's disposable pay during 2011 averaged [REDACTED] per month. Petitioner Earl is paid weekly, and I calculate his weekly disposable pay during 2011 to have been roughly [REDACTED]. Petitioner Earl's disposable pay will be less going forward, as deductions such as health insurance premiums increase. Garnishment to repay the debt may be no greater than 15% of disposable pay, so the maximum amount allowable has been, on average, about [REDACTED] per week. Consistently, [REDACTED] has been taken (too much). Although each week's disposable pay has

to be individually calculated, I am persuaded by PX 5 that more than the law allows has consistently been taken.

20. Petitioner Earl is married with three young children to support. Petitioner Earl's Consumer Debtor Financial Statement filed January 17, 2012 shows that his current living expenses are reasonable. In addition to those living expenses, Petitioner Earl is still dealing with financial burdens caused by his former wife. Petitioner Earl does receive child support from his former wife. Even so, garnishment at 15% of Petitioner Earl's disposable pay would currently cause Petitioner Earl financial hardship.

21. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 6) must be limited to **5%** of Petitioner Earl's disposable pay through March 2013; then **up to 10%** of Petitioner Earl's disposable pay beginning April 2013 through March 2014; then **up to 15%** of Petitioner Earl's disposable pay thereafter. 31 C.F.R. § 285.11.

22. Petitioner Earl, you may want to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

23. I encourage **Petitioner Earl and the collection agency** to **negotiate** the repayment of the debt. Petitioner Earl, 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 Earl, 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. You may choose to offer to pay through solely **offset of income tax refunds**, perhaps with a specified amount for a specified number of years. You may wish to include someone else with you in the telephone call when you call to negotiate.

Findings, Analysis and Conclusions

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

25. Petitioner Earl owes the debt described in paragraphs 5 through 17.

26. Garnishment is authorized, but to prevent financial hardship shall be limited as follows: through March 2013, garnishment **up to 5%** of Petitioner Earl's disposable pay; beginning April 2013 through March 2014, garnishment **up to 10%** of Petitioner Earl's disposable pay; and thereafter, garnishment **up to 15%** of Petitioner Earl's disposable pay. 31 C.F.R. § 285.11.

27. Any amounts collected through garnishment of Petitioner Earl's pay prior to implementation of this Decision **shall be returned to Petitioner Earl**.
28. Repayment of the debt may occur through *offset* of Petitioner Earl's **income tax refunds** or other **Federal monies** payable to the order of Mr. Earl.

Order

29. Until the debt is repaid, Petitioner Earl 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).
30. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment **up to 5%** of Petitioner Earl's disposable pay through March 2013. Beginning April 2013 through March 2014, garnishment **up to 10%** of Petitioner Earl's disposable pay is authorized; and garnishment **up to 15%** of Petitioner Earl's disposable pay thereafter. 31 C.F.R. § 285.11.
31. USDA Rural Development, and those collecting on its behalf, will be required to **return to Petitioner Earl** any amounts already collected through garnishment of Petitioner Earl's pay, prior to implementation of this Decision.

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

Done at Washington, D.C.
this 17th day of February 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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