

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Stacey L. Britton)	Docket No. 12-0158
)	
Petitioner)	Decision and Order

Appearances:

Stacey L. Britton, the Petitioner, representing herself (appearing *pro se*); 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. Following a prehearing conference (by telephone) on February 15, 2012, the Hearing (by telephone) was held on March 19 (Monday) 2012. Petitioner Stacey L. Britton, formerly Stacey L. Bolin (“Petitioner Britton”), participated, representing herself (appearing *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 Michelle Tanner.

Summary of the Facts Presented

3. Petitioner Britton’s documents filed on March 5, 2012 (pay stubs for two recent pay periods), are admitted into evidence, together with the testimony of Petitioner Britton and the testimony of Anita McKenna. Petitioner Britton’s documents filed on March 30, 2012 (compiled and presented by Anita McKenna) are admitted into evidence. Also admitted into evidence is Petitioner Britton’s Hearing Request filed on January 5, 2012 and accompanying documents, including Petitioner Britton’s FAX to Melody Bevelle dated and FAXed on December 28, 2011; Petitioner Britton’s “Consumer Debtor Financial Statement” which is not dated but was also FAXed on December 28, 2011, and Petitioner Britton’s email to [“awgquestions@fms.treas.gov”](mailto:awgquestions@fms.treas.gov) dated December 27, 2011.

4. USDA Rural Development's Exhibits RX 1 through RX 6, plus Narrative, Witness & Exhibit List, were filed on January 27, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner.

5. Petitioner Britton owes to USDA Rural Development a balance of **\$15,508.43** (as of January 25, 2012) in repayment of a United States Department of Agriculture / Farmers Home Administration loan made in 1993, for a home in South Carolina. The balance is now unsecured ("the debt"). See USDA Rural Development Exhibits RX 1 through RX 6, esp. RX 6, plus Narrative, Witness & Exhibit List.

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$15,508.43** would increase the current balance by \$4,652.53, to \$20,160.96. See USDA Rural Development Exhibits, esp. RX 6, p. 5, plus the testimony of Michelle Tanner.

7. The amount Petitioner Britton (then Bolin) borrowed in 1993 was \$50,000.00. RX 1. More than six years after the loan was made, the loan was reamortized, in 1999. RX 1, pp. 4-5. The loan had become delinquent, and reamortization made the loan current, by adding the delinquent amount to the principal balance. The reamortization did not change the total amount owed, which all became principal. The principal amount due on the account became \$50,030.77. Petitioner Britton was not able to keep the loan current; the loan was accelerated for foreclosure on May 25, 2004. RX 3, pp. 4-6. By the time the home was sold for \$35,000.00 (after the home was appraised at \$35,000.00) on June 30, 2004, the debt had grown to \$55,835.91.

\$ 47,200.08	Unpaid Principal Balance prior to sale
\$ 7,847.19	Unpaid Interest Balance prior to sale
\$ 788.64	Recoverable costs and fees (fees can include unpaid real estate taxes, unpaid insurance premiums, negative escrow), interest on fees
<u>\$ 55,835.91</u>	
- <u>35,000.00</u>	Proceeds from the sale
<u>\$ 20,835.91</u>	Amount Due
=====	

RX 6, p. 1, and USDA Rural Development Narrative.

Interest stopped accruing when the proceeds of sale (\$35,000.00) were applied to the debt, in 2004. Collections from Treasury since then (from Petitioner Britton's co-borrower, John A. Bolin, Sr.), through *offsets*, primarily of **income tax refunds** (\$5,327.48 applied to the

debt), leave **\$15,508.43** unpaid as of January 25, 2012 (excluding the potential remaining collection fees). *See* RX 6, p. 2, plus Michelle Tanner's testimony.

8. Petitioner Britton maintains in her Hearing Request and throughout this proceeding that she should have been advised by USDA of the amount of the deficiency that she would be held responsible to pay before agreeing to the short sale or at least at the closing. Petitioner Britton and her witness Anita McKenna testified that what they were advised instead was that USDA would issue the sellers a 1099 for the remaining balance. *See* Hearing Request, Petitioner Britton's documents filed on March 30, 2012, and the testimony of Petitioner Britton and Anita McKenna. *See also* letter dated March 12, 2005, from Petitioner Britton (then Bolin) and her co-borrower, John A. Bolin, Sr.

9. USDA Rural Development's practice then and now for borrowers whose short sale left them with a deficiency was to permit the borrowers to apply for settlement of indebtedness. "Any remaining debt due to the Agency after a short sale must be settled using our debt settlement process." *See* RX 5, p. 13. On July 17, 2004, USDA Rural Development mailed a debt settlement application to the borrowers.

"On July 17, 2004, the debt settlement package was sent to the mailing address indicated on Ms. Bolin's (Petitioner Britton's name when the loan was made) account which is 1014 Bransome Blvd Aiken, SC 29803. The debt settlement package was sent regular mail and was not returned back to Centralized Servicing Agency (CSC).

Unfortunately, Ms. Bolin did not provide the Agency with an offer to settle the remaining balance owed to the Agency. The Agency was unable to recover any funds owed to the Agency by Ms. Bolin. Consequently, on October 4, 2004, her debt was turned over to the United States Department of Treasury for Cross Servicing."

RX 5, pp. 13, 14.

The address for mailing the debt settlement application had been provided by the closing attorney, Morris Rudnick, of Rudnick & Rudnick, Attorneys at Law, Aiken, South Carolina. RX 5, p. 2. Mr. Rudnick wrote: "You can send the debt settlement package to 1014 Bransome Blvd., Aiken, SC 29803 or 1993 Dibble Road, Aiken, SC 29803 and the McKennas will see that it gets to them." [The first address is the home that Petitioner Britton sold in the short sale; the McKennas were the buyers; Mrs. McKenna is Petitioner Britton's mother.]

10. USDA Rural Development submitted the debt to the U.S. Treasury for collection, as required by statute, and there is a time limit for doing so. Petitioner Britton was sent the 60-

day notification letter of the loan being referred to Treasury for collection if the remaining balance was not paid. When Petitioner Britton later, in March 2005, applied for debt settlement (RX 5, pp. 4-9), it was too late for USDA Rural Development to consider the Application, because the loan was already in the hands of Treasury (and had been, since October 2004). USDA Rural Development mistakenly made a counter-offer (RX 5, p. 10) on March 30, 2005, which it had no authority to make, since Treasury was collecting the debt.

11. Petitioner Britton works full-time in the medical field as a phlebotomist, making [REDACTED] per hour. Her disposable pay (within the meaning of 31 C.F.R. § 285.11) is roughly [REDACTED] per month. [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.] 31 C.F.R. § 285.11. Petitioner Britton's Consumer Debtor Financial Statement shows living expenses for herself and her two teenagers that cost more than Petitioner Britton's disposable pay. Petitioner Britton is trying to obtain child support.

12. Garnishment at 15% of Petitioner Britton's disposable pay could yield [REDACTED] per month in repayment of the debt, but that would cause Petitioner Britton and her two children financial hardship. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **0%** of Petitioner Britton's disposable pay through May 2014; then **up to 10%** of Petitioner Britton's disposable pay thereafter. 31 C.F.R. § 285.11.

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

Discussion

14. Garnishment of Petitioner Britton's disposable pay is authorized, in limited amount. *See* paragraph 12. Petitioner Britton, you may want to telephone Treasury's collection agency to **negotiate** the repayment of the debt. Petitioner Britton, 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 Britton, 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 Britton, you may want to request apportionment of debt between you and the co-borrower. Petitioner Britton, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

16. Petitioner Britton owes the debt described in paragraphs 5, 6 and 7.
17. To prevent financial hardship, garnishment **up to 0%** of Petitioner Britton's disposable pay is authorized, through May 2014; and **up to 10%** thereafter. 31 C.F.R. § 285.11.
18. **No refund** to Petitioner Britton of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.
19. Repayment of the debt may also occur through *offset* of Petitioner Britton's **income tax refunds** or other **Federal monies** payable to the order of Ms. Britton.

Order

20. Until the debt is repaid, Petitioner Britton 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).
21. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment **up to 0%** of Petitioner Britton's disposable pay through May 2014; and **up to 10%** thereafter. 31 C.F.R. § 285.11.
22. I am **NOT** ordering any amounts already collected prior to implementation of this Decision, whether through *offset* or garnishment of Petitioner Britton's pay, to be returned to Petitioner Britton.

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 April 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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