

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) [AWG]
Demetrius J. Brown) Docket No. **12-0341**
)
Petitioner) **Decision and Order**

Appearances:

none for Demetrius J. Brown, the Petitioner (Petitioner Brown); 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 June 19, 2012. *See* “Hearing Notice and Prehearing Deadlines” filed April 27, 2012. Petitioner Brown failed to participate: he failed to be available at the telephone number¹ he provided on his Hearing Request (which he signed on March 2, 2012); he failed to file his current contact information as required by paragraph 14 of the Hearing Notice; and he failed to contact me through Marilyn Kennedy to advise how he could be reached 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 Brown failed to file a completed “Consumer Debtor Financial Statement” or anything, and he failed to testify. Petitioner Brown’s Hearing Request (signed March 2, 2012 and filed on April 9, 2012), states that he does not owe the debt for the reason that the home was left with his wife; that FH (Farmers Home) was supposed to take his name off that property; and that apparently they did not do what they should have.

¹ No one answered; the recorded voice, speaking Spanish, did not identify the phone as that of Demetrius Brown.

4. USDA Rural Development's Exhibits RX 1 through RX 5, plus Narrative, Witness & Exhibit List, were filed on May 11, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner. A copy of these documents was sent via express mail to Petitioner Brown at the Post Office Box he provided on his Hearing Request but returned to USDA Rural Development marked "UNCLAIMED." If Petitioner Brown wants his copy of these documents, he shall provide his current delivery address to Michelle Tanner and request that she send the documents to him again. Michelle Tanner's contact information is on the last page.

5. Petitioner Brown owes to USDA Rural Development a balance of **\$54,031.97** (as of May 9, 2012) in repayment of **two** United States Department of Agriculture / Farmers Home Administration loans, one made in 1992, and the other made in 1995, for a home in Florida. The balance is now unsecured ("the debt"). See USDA Rural Development Exhibits RX 1 through RX 5 (esp. RX 1, RX 5 and RX 4, p. 10), 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 **\$54,031.97** would increase the current balance by \$15,128.96, to \$69,160.93. See USDA Rural Development Exhibits, esp. RX 5 and RX 4, p. 10, plus the testimony of Michelle Tanner.

7. The amount Petitioner Brown borrowed in 1992 was \$48,500.00. RX 1. The amount Petitioner Brown borrowed in 1995 was \$30,000.00. RX 1. After the loans had become delinquent, the loans were reamortized. RX 1. Reamortization made the loans current, by adding the delinquent amount to the principal balance. Reamortizations did not change the total amount owed, which all became principal. In 1998, the principal amount due on 1992 loan became \$48,312.27. RX 1, p. 7. In 1998, the principal amount due on the 1995 loan became \$30,785.43. RX 1, p. 9. Interest, of course, continued to accrue. Petitioner Brown did not keep the loans current; the payment due September 23, 1999, and those payments due thereafter, were not made. RX 2, p. 10.

8. The loans were accelerated for foreclosure on February 2, 2000. RX 2. The home was sold for \$32,601.00 in a foreclosure sale on January 10, 2001. After the funds from the foreclosure sale (\$32,601.00) were received by USDA Rural Development on February 23, 2001, the 1992 loan was credited in the amount of \$20,442.61; and the 1995 loan was credited in the amount of \$12,158.39.

| | |
|---------------------|--|
| \$ 91,151.36 | Unpaid balance of both loans before funds applied |
| - <u>32,601.00</u> | Funds from the foreclosure sale |
| <u>\$ 58,550.36</u> | Balance due following foreclosure (\$36,328.34 plus \$22,222.02) |
| ===== | |

RX 5, and USDA Rural Development Narrative.

9. Interest stopped accruing on February 23, 2001, when the funds from the foreclosure sale were received by USDA Rural Development. Since then, **offset** of **income tax refunds** or other **Federal monies** (in 2004, 2006, and 2011, *see* RX 5) have reduced the balance due to **\$54,031.97** (\$31,809.95 plus \$22,222.02).

10. Petitioner Brown provided no financial information, so there is no evidence for me to consider whether garnishment would cause Petitioner Brown financial hardship. I presume Petitioner Brown can withstand garnishment at 15% of his disposable pay in repayment of the debt. 31 C.F.R. § 285.11.

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

Discussion

12. Garnishment of Petitioner Brown's disposable pay is authorized. *See* paragraph 10. Petitioner Brown, you may want to telephone Treasury's collection agency to **negotiate** the repayment of the debt. Petitioner Brown, 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 Brown, 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 Brown, you may want to request apportionment of debt between you and the co-borrower. Petitioner Brown, 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 Brown and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.

14. Petitioner Brown owes the debt described in paragraphs 5 through 9.

15. Garnishment **up to 15%** of Petitioner Brown's disposable pay is authorized. 31 C.F.R. § 285.11.

16. **No refund** to Petitioner Brown 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 Brown's **income tax refunds** or other **Federal monies** payable to the order of Mr. Brown.

Order

18. Until the debt is repaid, Petitioner Brown 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 Brown'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 Brown's pay, to be returned to Petitioner Brown.

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

Done at Washington, D.C.
this 22nd day of June 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Michelle Tanner, Appeals Coordinator
USDA / RD Centralized Servicing Center
Bldg 105 E, FC-244
4300 Goodfellow Blvd
St Louis MO 63120-1703
michelle.tanner@stl.usda.gov

314-457-5775 phone
314-457-4547 FAX

Hearing Clerk's Office
U.S. Department of Agriculture
South Building Room 1031
1400 Independence Avenue, SW
Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776