

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) [AWG]
Cindy A. Battistoni,) Docket No. **12-0349**
)
f/k/a Cindy A. VanBuren,)
)
Petitioner) **Decision and Order**

Appearances:

Cindy A. Battistoni, 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. The hearing by telephone was held on June 29, 2012. The Petitioner, Cindy A. Battistoni, formerly known as Cindy A. VanBuren (“Petitioner Battistoni”), participated, representing herself (appears *pro se*).
2. The Respondent, Rural Development, an agency of the United States Department of Agriculture (“USDA Rural Development”), participated, represented by Michelle Tanner.

Summary of the Facts Presented

3. Admitted into evidence are Petitioner Battistoni’s testimony and her Hearing Request dated March 9, 2012.
4. Admitted into evidence are Michelle Tanner’s testimony and USDA Rural Development’s Exhibits RX 1 through RX 7, plus Narrative, Witness & Exhibit List, which were filed on June 1, 2012.
5. Petitioner Battistoni owes to USDA Rural Development **\$23,318.22** (as of May 31, 2012, *see esp.* RX 7, pp. 1, 2), in repayment of a United States Department of Agriculture /

Farmers Home Administration loan made in 1994, for a home in New York. The balance is now unsecured (“the debt”).

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$23,318.22**, would increase the balance by \$6,529.10 to \$29,847.32. *See esp.* RX 7, p. 2.

7. The amount Petitioner Battistoni borrowed in 1994 was \$68,000.00. RX 1. Foreclosure was begun in 2009. Petitioner Battistoni’s co-borrower, her former husband, Chad D. VanBuren, Sr., filed for Chapter 13 Bankruptcy in 2010. The Bankruptcy stay was modified to allow foreclosure. The foreclosure sale took place in March 2011, when the home was sold to a third party for \$55,100.00 (RX 4). By the time the sale proceeds (\$54,980.56) were applied to reduce the balance, the USDA Rural Development debt had grown to \$80,751.78:

\$ 56,387.20	Principal
\$ 11,488.86	Interest
\$ 12,802.75	Recoverable Costs
\$ <u>72.97</u>	Interest on Recoverable Costs
\$ 80,751.78	Amount Due when sale funds were applied on the loan
=====	

RX 6, and USDA Rural Development Narrative.

The sale proceeds of \$54,980.56 were applied to the Amount Due. Interest stopped accruing when the sale funds were applied on the loan. Collections from Treasury (through *offset* of Petitioner Battistoni’s income tax refund that was intercepted and applied to the debt, *see* RX 7, p. 1) reduced the debt from \$25,771.22 to **\$23,318.22** unpaid as of May 31, 2012 (excluding the potential remaining collection fees). *See* RX 7 and USDA Rural Development Narrative.

8. Petitioner Battistoni testified that the home and the debt are the responsibility of her co-borrower, her former husband, Chad D. VanBuren, Sr. Petitioner Battistoni may have recourse against her co-borrower, her former husband, for sums she is required to pay that were his responsibility. Nevertheless, the debt remains her and her co-borrower’s joint-and-several obligation. Petitioner Battistoni still owes the balance of **\$23,318.22** (as of May 31, 2012, excluding the potential remaining collection fees), and USDA Rural Development may collect that amount from her. When Petitioner Battistoni entered into the borrowing transaction with her co-borrower in 1994, certain responsibilities were fixed, as to each of them. Petitioner Battistoni testified that she did inquire about a release of liability, but her co-borrower was already delinquent when she asked.

9. **Petitioner Battistoni has held her current job for less than 12 months, and she was involuntarily separated (let go) from her last job.** She may not be garnished until she has held a job for 12 months or longer.

Discussion

10. I recommend that Petitioner Battistoni and Treasury's collection agency negotiate a compromise of the debt. Petitioner Battistoni, 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 Battistoni, you may want to request apportionment of debt between you and the co-borrower. Petitioner Battistoni, 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. Petitioner Battistoni, 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 Battistoni, you may wish to include someone else with you in the telephone call when you call to negotiate.

Findings, Analysis and Conclusions

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

12. Petitioner Battistoni owes the debt described in paragraphs 5 through 7.

13. **Garnishment is not authorized through July 2013.** To prevent hardship, beginning **August 2013 through July 2014**, potential garnishment to repay the debt **up to 10%** of Petitioner Battistoni's disposable pay is authorized; and **up to 15%** thereafter. 31 C.F.R. § 285.11.

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

15. Repayment of the debt may occur through **offset** of Petitioner Battistoni's **income tax refunds** or other **Federal monies** payable to the order of Ms. Battistoni.

Order

16. Until the debt is repaid, Petitioner Battistoni 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).

17. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment in any amount **through July 2013**. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment **up to 10%** of Petitioner Battistoni's disposable pay beginning **August 2013 through July 2014**; and **up to 15%** thereafter. 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 10th day of July 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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