

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AWG]
) Docket No. 12-0342
Robert Jurjevich)
) **Remand to USDA Rural Development and**
Petitioner) **Dismissal of Garnishment Proceeding and This Case**

Appearances:

Robert Jurjevich, full name Robert Harris Jurjevich, Petitioner, represented by Kristen R. Jurjevich, Esq.; 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 was held on June 19, 2012. Robert Jurjevich, full name Robert Harris Jurjevich (“Petitioner Jurjevich”), participated in Washington, D.C., represented by Kristen R. Jurjevich, Esq. (by telephone). Present with Petitioner Jurjevich and assisting him, was his wife Sara Jurjevich (who is not obligated on the **Guarantee**).

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

Summary of the Facts Presented

3. Petitioner Jurjevich’s Exhibits PX 1 through PX 4,¹ plus Petitioner’s Brief Opposing Validity of Debt (filed June 11, 2012), are admitted into evidence, together with the testimony of Petitioner Jurjevich, together with his Hearing Request dated March 6, 2012.

¹ The 1099-A for 2010 is PX 1. The completed “Consumer Debtor Financial Statement” is PX 2. The pay stub for Pay Date 04/13/2012 is PX 3. The pay stub for Pay Date 05/25/2012 is PX 4.

4. USDA Rural Development's Exhibits RX 1 through RX 10, plus Narrative, Witness & Exhibit List, were filed on May 8, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner. [USDA Rural Development paid a loss claim under a United States Department of Agriculture / Rural Development / Rural Housing Service *Guarantee*, and expects reimbursement from Petitioner Jurjevich pursuant to the *Guarantee*.]

5. Petitioner Jurjevich's efforts to cope with the debt were impressive, particularly his payments to Chase during unemployment, which began January 2005. The unemployment was a shock to Petitioner Jurjevich and his family; he was informed in December 2004 that there would no longer be a place for him. The unemployment began 13 months after Petitioner Jurjevich undertook the loan (while securely, it had seemed, employed). Even when Petitioner Jurjevich found work, he was under-employed. Six months later in 2005, he began working in RV sales (commissions), but that job ended with the RV dealership's bankruptcy. Petitioner Jurjevich worked side jobs. Chase was not helpful (Chase had the *Guarantee*). Chase advised to stop making payments, take the home off the market, wait for new government program, wait to hear from Chase, Chase would put unpaid payments at the end of the loan. Ultimately, Chase offered nothing; there was no program that would help.

6. Interest accrued from August 1, 2008 to November 4, 2010. RX 7. Interest began to accrue on the Due Date of Last Payment Made, August 1, 2008, *see* RX 6, p. 4. Interest stopped accruing on the Closing Date, November 4, 2010, *see* RX 5, p. 2; RX 6, p. 6. RX 7.

7. Garnishment began in March or April 2012, because Petitioner Jurjevich's Hearing Request was LATE. The "Notice of Intent to Initiate Administrative Wage Garnishment Proceedings," dated February 8, 2012, gave Petitioner Jurjevich the following deadline to request a hearing:

REQUEST A HEARING. You may request a hearing from the Federal Agency by completing and mailing the enclosed Request for Hearing to the address listed below (U.S. Department of the Treasury, in Birmingham, Alabama). If we receive your written request for a hearing on or before **February 29, 2012** (emphasis added), Treasury will not issue a wage garnishment order on behalf of the Federal Agency until your hearing is held and a decision is reached.

The Notice of Intent was properly sent to Petitioner's current address (his address since mid-2010). Ordinarily, there would be no basis to provide relief to Petitioner Jurjevich for garnishment that has already occurred. Petitioner Jurjevich's testimony persuades me that relief is appropriate here, however: when Petitioner Jurjevich asked Treasury for a payment plan, Treasury "said they were only to collect, not negotiate." Petitioner's testimony. Such

response from Treasury to a request for a payment plan, was erroneous and contradicted a paragraph of the Notice of Intent:

If you pay your debt in full or enter into a repayment plan acceptable to Treasury before March 9, 2012, a garnishment order will not issue to your employer.

Would Petitioner Jurjevich and Treasury have been successful in negotiating a repayment plan acceptable to Treasury? We will never know. But Treasury's denial of the opportunity to negotiate with Treasury when specifically requested by Petitioner Jurjevich, is sufficient grounds for me **to order that the amounts taken from Petitioner Jurjevich's pay through garnishment be returned to him**, even though his Hearing Request was regarded as LATE.

8. Further, Petitioner Jurjevich lost an earlier opportunity to negotiate a repayment plan, when USDA Rural Development wrote to offer "debt settlement". The "debt settlement" letter dated September 10, 2011 (RX 9) included an invitation to "agree to a repayment plan acceptable to us, and make payments required in the repayment plan" (RX 9, p. 2). That debt settlement letter was sent to Petitioner Jurjevich not at his current address (his address since mid-2010); but nevertheless to an address that should have reached him, his work address, the address of a church where he is on ministry staff. However, Petitioner Jurjevich testified persuasively that he had not seen that "debt settlement" letter until he saw it in his copies of USDA Rural Development's Exhibits (filed on May 8, 2012; sent to Petitioner Jurjevich at about that same time). Petitioner Jurjevich testified persuasively that he was unaware he was liable to the USDA until he received notice of the debt from the U.S. Treasury Department at about the end of January 2012. Thus, Petitioner Jurjevich lost his "debt settlement" opportunity with USDA Rural Development, and that opportunity should and will be restored. I have determined to REMAND this case to USDA Rural Development to begin anew the "debt settlement" process.

Findings, Analysis and Conclusions

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

10. Petitioner Jurjevich shall have the opportunity to negotiate a repayment plan with USDA Rural Development such as was contemplated by RX 9. USDA Rural Development will begin the process by sending a letter like RX 9 (the current version being utilized) to Petitioner Jurjevich at BOTH (a) his current address; and (b) the address of his attorney Kristen R. Jurjevich, Esq.

11. After USDA Rural Development begins the “debt settlement” process, the debt shall NOT be submitted to the U.S. Treasury for Cross Servicing except under circumstances that would normally cause USDA Rural Development to do so, such as those described in RX 9.

12. Please notice, Petitioner Jurjevich, every detail of RX 9, p. 2 (its equivalent, in the letter you are going to receive), including your obligation to “submit a request for a written repayment agreement to the Centralized Servicing Center” (part of USDA Rural Development). You, Petitioner Jurjevich, as you complete the forms and provide the requested documentation, will need to determine what to offer: total amount, as well as installments.

13. If NO agreed repayment plan between Petitioner Jurjevich and USDA Rural Development happens, or there is a default in meeting repayment plan requirements, and if the debt is consequently submitted to the U.S. Treasury for Cross Servicing, Petitioner Jurjevich will be entitled anew to have a hearing, such as is described in the “Important Notice Concerning Administrative Wage Garnishment” that accompanied the U.S. Treasury’s “Notice of Intent to Initiate Administrative Wage Garnishment Proceedings”, dated February 8, 2012.²

14. Any amounts collected through garnishment of Petitioner Jurjevich’s pay prior to implementation of this Decision **shall be returned to Petitioner Jurjevich. [The balance will of course increase when amounts taken from Petitioner Jurjevich’s pay are returned to him.]**

Order

15. Until the debt is repaid, Petitioner Jurjevich 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).

16. This case is REMANDED to USDA Rural Development, which shall recall the debt from Treasury and give Petitioner Jurjevich the opportunity to negotiate a repayment plan with USDA Rural Development. Accordingly, the Garnishment Proceeding and this case

² A new Hearing Request should reference Docket No. 12-0342, and mention that a Hearing was begun on June 19, 2012. If I am still available to hear the case, either side may rely on evidence already presented. If another judge or hearing official will hear the case in my place, the evidence will likely need be presented again. The exhibits would be available in the Hearing Clerk’s record file, but testimony was not recorded except in my notes.

are DISMISSED, without prejudice to Petitioner Jurjevich to request a hearing timely, should garnishment be noticed.

17. USDA Rural Development, and those collecting on its behalf, will be required to **return to Petitioner Jurjevich** any amounts already collected through garnishment of Petitioner Jurjevich's pay, prior to implementation of this Decision.

Copies of this "Remand to USDA Rural Development and Dismissal of Garnishment Proceeding and This Case" shall be served by the Hearing Clerk upon each of the parties, and Petitioner Jurjevich shall be served BOTH at (a) his current address; and (b) the address of his attorney Kristen R. Jurjevich, Esq.

Done at Washington, D.C.
this 31st day of July 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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