

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) [AWG]
Dustin McQuigg) Docket No. **12-0500**
)
Petitioner) **Decision and Order**

Appearances:

none, for Dustin McQuigg, the Petitioner; 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 as scheduled by telephone on August 23, 2012. Dustin McQuigg, also known as Dustin L. McQuigg (“Petitioner McQuigg”) did not participate. (Petitioner McQuigg did not participate by telephone: no one answered at the telephone number Petitioner McQuigg provided on his Hearing Request; and contrary to my Order issued July 25, 2012, Petitioner McQuigg provided no telephone number where he could be reached for the hearing 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 McQuigg owes to USDA Rural Development a balance of **\$54,786.16** (as of July 21, 2012) in repayment of a United States Department of Agriculture / Rural Development / Rural Housing Service *Guarantee* (see RX 1, esp. p. 2) for a loan made on September 29, 2006 by First National Bank and Trust for a home in Nebraska, the balance of which is now unsecured (“the debt”). See USDA Rural Development Exhibits RX 1 through RX 11, plus Narrative, Witness & Exhibit List (filed July 24, 2012), which are admitted into evidence, together with the testimony of Michelle Tanner.

4. This *Guarantee* establishes an **independent** obligation of Petitioner McQuigg, “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.

5. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$54,786.16** would increase the current balance by \$15,340.12, to \$70,126.28. *See* USDA Rural Development Exhibits, esp. RX 10, p. 2.

6. The amount Petitioner McQuigg borrowed was \$67,450.00 on September 29, 2006. RX 2. The loan was sold to US Bank Home Mortgage (“US Bank”). Petitioner McQuigg defaulted on the mortgage loan payments to US Bank, and the loan was accelerated for foreclosure. The Due Date of Last Payment Made was May 1, 2009. RX 6, p. 5. Foreclosure was initiated on November 13, 2009. A foreclosure sale was held on February 26, 2010, at which US Bank acquired the property back into inventory with the highest bid, \$59,500.00. RX 6, p. 5.

7. The “As Is” value from one appraisal as of March 18, 2010 was \$45,000.00. RX 6, p. 6. The “As Is” Value per the Brokers Price Opinion (BPO) as of March 11, 2010 was \$52,500.00. RX 6, p. 6. US Bank placed the home “as is” on the market for resale for \$52,500.00. RX 6, p. 6. Thus, the Original List Price was \$52,500.00. The Final List Price was \$39,900.00. The lender US Bank marketed the home but did not accomplish a sale within the prescribed marketing period, which ended on August 25, 2010. RX 6, p. 6. A liquidation appraisal was done for USDA Rural Development on October 19, 2010 (*see* RX 5, p. 8; RX 6, p. 6).¹

8. USDA Rural Development reimbursed the lender **\$54,786.16** on July 29, 2011. RX 6, p. 11. Thus **\$54,786.16**, the amount USDA Rural Development paid, is the amount USDA Rural Development recovers from Petitioner McQuigg under the *Guarantee*. RX 7. No more interest accrues; no interest, no penalties. The interest stopped accruing on the date of the liquidation appraisal, which was October 19, 2010 (*see* RX 5, p. 8; RX 6, p. 6). RX 7 details the loss claim paid under the *Guarantee*, showing how the debt became **\$54,786.16**, including showing the \$25,000.00 liquidation value as a credit.

¹ The liquidation value, used because the home did not sell within the prescribed period, was only \$25,000.00. RX 5, p. 8; RX 6, p. 6.

9. Petitioner McQuigg stated in his Hearing Request: “Co-Signor Melinda VanEperen is responsible for Half!!!” Petitioner McQuigg and his co-borrower, Melinda VanEperen, are jointly and severally liable to pay the debt. Melinda VanEperen is held responsible to pay the debt just as Petitioner McQuigg is, as shown by RX 10. USDA Rural Development may legally collect more than half, even all, from either one of them. Once Petitioner McQuigg entered into the borrowing transaction with his co-borrower, certain responsibilities were fixed. Petitioner McQuigg owes the balance of **\$54,786.16** (excluding potential collection fees) as of July 21, 2012, and so does his co-borrower. Even if Petitioner McQuigg has legal recourse against his co-borrower for monies collected from him on the debt, that does not prevent USDA Rural Development from collecting from him, pursuant to the *Guarantee*. RX 1.

10. Although my Hearing Notice and Prehearing Deadlines, dated July 25, 2012, invited financial disclosure from Petitioner McQuigg, such as filing a Consumer Debtor Financial Statement, he filed nothing. Thus I cannot calculate Petitioner McQuigg’s current disposable pay. (Disposable pay 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.) There is no evidence before me to use to consider the factors to be considered under 31 C.F.R. § 285.11. In other words, I cannot tell whether garnishment to repay “the debt” (*see* paragraph 3) in the amount of 15% of Petitioner McQuigg’s disposable pay creates a financial hardship.

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

Discussion

12. Garnishment **up to 15%** of Petitioner McQuigg’s disposable pay is authorized. Petitioner McQuigg, if you choose to negotiate with Treasury’s collection agency, 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**. I encourage **Petitioner McQuigg and Treasury’s collection agency to negotiate promptly** the repayment of the debt. Petitioner McQuigg, 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 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 want to request apportionment of the debt between you and the co-borrower.** Petitioner McQuigg, you may wish to include someone else with you in the telephone call if you call to negotiate.

Findings, Analysis and Conclusions

13. The Secretary of Agriculture has jurisdiction over the parties, Petitioner McQuigg and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.
14. Petitioner McQuigg owes the debt described in paragraphs 3 through 8.
15. **Garnishment up to 15% of Petitioner McQuigg's disposable pay** is authorized. There is no evidence that financial hardship will be created by the garnishment. 31 C.F.R. § 285.11.
16. **No refund** to Petitioner McQuigg 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 McQuigg's **income tax refunds** or other **Federal monies** payable to the order of Mr. McQuigg.

Order

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

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

Done at Washington, D.C.
this 23rd day of August 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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