

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Stephanie Reardon,)	Docket No. 12-0531
)	
Petitioner)	Decision and Order

Appearances:

Petitioner Stephanie Reardon, self represented (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 begun on August 29 and resumed on September 17, 2012. Stephanie Reardon, full name Stephanie Marie Reardon, the Petitioner (“Petitioner Reardon”), participated, self represented (appearing *pro se*).
2. Rural Development, an agency of the United States Department of Agriculture (USDA), the Respondent (“USDA Rural Development”), participated, represented by Michelle Tanner.

Summary of the Facts Presented

3. Petitioner Reardon’s earnings statement and accompanying note addressed “To Whom It May Concern” requesting that the wage garnishment stop (filed September 7, 2012), are admitted into evidence, together with the testimony of Petitioner Reardon. Also admitted into evidence is Petitioner Reardon’s Hearing Request dated July 3, 2012 with all accompanying documents.
4. USDA Rural Development’s Exhibits RX 1 through RX 10, plus Narrative, Witness & Exhibit List, were filed on August 6, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner.

5. Petitioner Reardon bought a home in Ohio in 2006, borrowing \$223,206.00 to pay for it. The loan was made by Villa Mortgage, Inc. and immediately sold to U.S. Bank, N.A.; the **Guarantee** remained in force. RX 2. USDA Rural Development's position is that Petitioner Reardon owes to USDA Rural Development **\$159,452.49** (as of July 28, 2012), in repayment of the United States Department of Agriculture / Rural Development / Rural Housing Service **Guarantee** (see RX 1, esp. p. 2) for the loan made in 2006 ("the debt"). See USDA Rural Development's Exhibits RX 1 through RX 10, plus Narrative, Witness & Exhibit List.

6. After careful review of all of the evidence, I agree with USDA Rural Development's position. [The loan balance has changed from the July 28, 2012 balance of **\$159,452.49** (excluding collection costs), because garnishment was ongoing. Petitioner Reardon's testimony and Michelle Tanner's testimony. The balance has therefore been reduced and may continue to change.] Petitioner Reardon argues that by paying the USDA Rural Development fee for the **Guarantee** (see RX 1, p. 1, at the bottom), the borrowers as well as the lender should be protected by the **Guarantee**. The argument is clever, but I conclude that the **Guarantee** protects only the lender.

7. The **Guarantee** (RX 1) establishes an **independent** obligation of Petitioner Reardon, "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.

8. The Servicing Lender was U.S. Bank Home Mortgage. RX 3; RX 6, p. 4. The Due Date of the last payment made was July 1, 2008. RX 6, p. 5. The foreclosure sale date was July 8, 2010. RX 6, p. 23. U.S. Bank acquired the home as the highest bidder for \$110,200.00. RX 3, p. 6. U.S. Bank sold the home for \$107,500.00 on December 27, 2010. RX 7 details the loss claim paid under the **Guarantee**, showing how the debt became **\$159,452.49**.

\$217,892.44	Unpaid Principal Balance
\$ 35,368.91	Unpaid Interest Balance
\$ 8,959.81	Protective Advances to Pay Taxes and Insurance
<u>\$ 197.88</u>	Interest on Protective Advances
\$262,419.04	
+ <u>\$ 19,964.07</u>	Lender Expenses to Sell Property

\$282,383.11 Total Debt Charged to Petitioner Reardon
 =====

The debt was then \$282,383.11. RX 7.

- \$ 107,500.00 Funds Received from Sale of the home

\$ 174,883.11 Amount Due Before \$15,430.62 Recoveries/Credits/Reductions
 =====

- \$ 15,430.62 Recoveries/Credits/Reductions

\$ 159,452.49
 =====

RX 7, USDA Rural Development Narrative, and testimony.

9. USDA Rural Development reimbursed the lender **\$159,452.49** on September 26, 2011 (RX 6, p. 11), which is the amount USDA Rural Development seeks to recover from Petitioner Reardon under the *Guarantee*. RX 7.

10. Interest stopped accruing when the sale funds were applied. Collections from Treasury (garnishments from Petitioner Reardon) applied to the debt (after collection fees are subtracted) have reduced the **\$159,452.49** balance (which excludes the potential remaining collection fees).

11. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$159,452.49**, would increase the balance by \$44,646.69, to \$204,099.18. RX 10, p. 2.

12. Petitioner Reardon asks that the garnishments stop. Petitioner Reardon testified that earnings of \$12.40 per hour for 30-32 hours per week are barely adequate to support self and the 13 year-old son. The 13 year-old son has a medical card from the State. Petitioner Reardon testified of significant debt in addition to that owed to USDA Rural Development, including school loans, bills for surgery, and payments for a car that was repossessed about the time of the foreclosure.

13. Garnishment of Petitioner Reardon's disposable pay in any amount would currently cause Petitioner Reardon financial hardship. To prevent hardship, potential garnishment to repay the USDA Rural Development debt must be limited to **0%** of Petitioner Reardon's disposable pay through September 2014; then **up to 5%** of Petitioner Reardon's disposable pay beginning October 2014 through September 2016; then **up to 10%** of Petitioner Reardon's disposable pay beginning October 2016 through September 2018; then **up to**

15% of Petitioner Reardon's disposable pay thereafter. 31 C.F.R. § 285.11.

14. Petitioner Reardon, you may want to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

15. I encourage **Petitioner Reardon and Treasury's collection agency** to **negotiate** the repayment of the debt. Petitioner Reardon, this will require **you** to telephone the collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Reardon, you may want to mention the bankruptcy discharge of your co-borrower's obligation to pay the debt. Petitioner Reardon, 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 Reardon, 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 wish to include someone else with you in the telephone call if you call to negotiate.

Findings, Analysis and Conclusions

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

17. Petitioner Reardon owes the debt described in paragraphs 5 through 11.

18. Garnishment is authorized, but to prevent financial hardship shall be limited as follows: through September 2014 garnishment limited to **0%** of Petitioner Reardon's disposable pay; beginning October 2014 through September 2016 garnishment **up to 5%** of Petitioner Reardon's disposable pay; beginning October 2016 through September 2018 garnishment **up to 10%** of Petitioner Reardon's disposable pay; and thereafter, garnishment **up to 15%** of Petitioner Reardon's disposable pay. 31 C.F.R. § 285.11.

19. **No refund** to Petitioner Reardon of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.

20. Repayment of the debt may also occur through **offset** of Petitioner Reardon's **income tax refunds** or other **Federal monies** payable to the order of Petitioner Reardon.

Order

21. Until the debt is repaid, Petitioner Reardon shall give notice to USDA Rural Development or those collecting on its behalf, of any changes in mailing address; delivery

address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).

22. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment limited to **0%** of Petitioner Reardon's disposable pay through September 2014; then **up to 5%** of Petitioner Reardon's disposable pay beginning October 2014 through September 2016; then **up to 10%** of Petitioner Reardon's disposable pay beginning October 2016 through September 2018; then **up to 15%** of Petitioner Reardon's disposable pay 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 25th day of September 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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