

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Isaias Rodriguez,)	Docket No. 12-0332
)	
Petitioner)	Decision and Order

Appearances:

Isaias Rodriguez, representing himself (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 6 and resumed on August 10, 2012. Isaias Rodriguez, the Petitioner (“Petitioner Rodriguez”), who represents himself (appears *pro se*), participated on August 6. His wife, Mrs. Rodriguez, participated both on August 6, and August 10.

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 Rodriguez’s filings on September 13, 2012, including his “Consumer Debtor Financial Statement” with additional extensive financial information, and his Unemployment Benefits Determination, are admitted into evidence, together with the testimony of Petitioner Rodriguez and his wife Mrs. Rodriguez. Also admitted into evidence is Petitioner Rodriguez’s Hearing Request dated February 28, 2012 with all accompanying documents.

4. USDA Rural Development's Exhibits RX 1 through RX 10, plus Narrative, Witness & Exhibit List, were filed on May 4, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner.

5. Petitioner Rodriguez bought a home in Minnesota in 2005, borrowing \$180,481.00 to pay for it. The loan was made by JP Morgan Chase Bank, N.A., with the servicing lender being Chase Home Finance, LLC. RX 2; RX 6, p. 4.

6. USDA Rural Development's position is that Petitioner Rodriguez owes to USDA Rural Development **\$106,943.42** (as of May 3, 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 2005 ("the debt"). See USDA Rural Development's Exhibits RX 1 through RX 10, plus Narrative, Witness & Exhibit List.

7. After careful review of all of the evidence, I agree with USDA Rural Development's position. The **Guarantee** remained in force, and on April 8, 2011, USDA Rural Development paid a loss claim of \$112,491.42 to the lender. RX 6, p. 11.

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

9. The Due Date of the last payment made was March 1, 2009. RX 6, p. 4. The foreclosure sale date was November 18, 2009. RX 6, p. 5. RX 7 details the loss claim paid under the **Guarantee**, showing how the loss claim of \$112,491.42 was calculated.

\$163,841.86	Unpaid Principal Balance
\$ 16,536.81	Unpaid Interest Balance
\$ 4,092.04	Protective Advances to Pay Taxes and Insurance
<u>\$ 4.54</u>	Interest on Protective Advances
\$184,475.25	
+ \$ <u>9,218.19</u>	Lender Expenses to Sell Property
<u>\$193,693.44</u>	Total Debt Charged to Petitioner Rodriguez
=====	

The debt was then \$193,693.44. RX 7.

-	<u>\$ 65,900.00</u>	Funds Received from Sale of the home
	\$127,793.44	Amount Due Before \$15,302.02 Recoveries/Credits/Reductions
	=====	
-	<u>\$ 15,302.02</u>	Recoveries/Credits/Reductions
	\$112,491.42	
	=====	

RX 7, USDA Rural Development Narrative, and testimony.

10. The home was sold on March 4, 2011 for \$65,900.00. RX 6, p. 6. Interest stopped accruing when the sale funds were applied. USDA Rural Development reimbursed the lender \$112,491.42 on April 8, 2011 (RX 6, p. 11), which is the amount USDA Rural Development seeks to recover from Petitioner Rodriguez under the *Guarantee*. RX 7.

11. A collection from Treasury (interception of a \$5,565.00 income tax refund) which was applied to reduce the debt (after the \$17.00 collection fee was subtracted) resulted in the balance of **\$106,943.42** (which excludes the potential remaining collection fees).

12. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$106,943.42**, would increase the balance by \$29,944.16, to \$136,887.58 (as of May 3, 2012). RX 10, p. 2.

13. Garnishment of Petitioner Rodriguez's disposable pay in any amount would currently cause Petitioner Rodriguez financial hardship. Petitioner Rodriguez and his wife have 3 children to support, in addition to themselves. [Mrs. Rodriguez is not responsible to pay the USDA Rural Development debt.] Petitioner Rodriguez has been laid off from work since August 28, 2012. As his Unemployment Benefits Determination shows, and as his wife's testimony proved, Petitioner Rodriguez's work is seasonal, and during the winter when his income is lower, they get behind. One winter he was laid off for 6 months.

14. To prevent hardship, potential garnishment to repay the USDA Rural Development debt must be limited to **0%** of Petitioner Rodriguez's disposable pay through September 2014; then **up to 5%** of Petitioner Rodriguez's disposable pay beginning October 2014 through September 2016; then **up to 10%** of Petitioner Rodriguez's disposable pay beginning October 2016 through September 2018; then **up to 15%** of Petitioner Rodriguez's disposable pay thereafter. 31 C.F.R. § 285.11.

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

Discussion

16. Petitioner Rodriguez, you may choose to call Treasury's collection agency to **negotiate** the repayment of the debt. Petitioner Rodriguez, 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 Rodriguez, 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 Rodriguez, 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

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

18. Petitioner Rodriguez owes the debt described in paragraphs 5 through 12.

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

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

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

Order

22. Until the debt is repaid, Petitioner Rodriguez 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).

23. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment limited to **0%** of Petitioner Rodriguez's disposable pay through September 2014; then **up to 5%** of Petitioner Rodriguez's disposable pay beginning October 2014 through September 2016; then **up to 10%** of Petitioner Rodriguez's disposable pay beginning October 2016 through September 2018; then **up to 15%** of Petitioner Rodriguez'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 28th day of September 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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