

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Jeffrey Houtman)	Docket No. 12-0417
)	
Petitioner)	Decision and Order

Appearances:

none for Jeffrey Houtman, the Petitioner (Petitioner Houtman); and

Giovanna Leopardi, 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 as scheduled on July 12, 2012. Jeffrey Houtman, the Petitioner (Petitioner Houtman), represents himself (appears *pro se*) and did not participate.
2. Rural Development, an agency of the United States Department of Agriculture (USDA), the Respondent (“USDA Rural Development”), participated, represented by Giovanna Leopardi.

Summary of the Facts Presented

3. Petitioner Houtman failed to file a completed “Consumer Debtor Financial Statement” or anything, and he failed to testify. Admitted into evidence are Petitioner Houtman’s Hearing Request dated April 12, 2012 and the accompanying Settlement Statement. The Settlement Statement shows that in July 2010 Petitioner Houtman sold the Greenville, Michigan home that secured the debt at issue here. The Settlement Statement shows that Petitioner Houtman received more than \$14,000.00 back from the sale after the “loan Payoff” of \$33,647.76 was subtracted from proceeds. [The \$33,647.76 was not adequate to pay off the loan but was adequate to get the property free and clear so it could be sold.]

4. USDA Rural Development's Exhibits RX 1 through RX 10, plus Narrative, Witness & Exhibit List, were filed on June 13, 2012, and are admitted into evidence, together with the testimony of Giovanna Leopardi. Also admitted into evidence are Giovanna Leopardi's Supplementation to the Narrative filed August 10, 2012, and her additional Narrative, Witness & Exhibit List filed October 11, 2012.

5. Petitioner Houtman bought a home in Michigan in February 2009, borrowing \$43,367.00 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. Frequently I refer to the lender as "Chase".

6. USDA Rural Development's position is that Petitioner Houtman owes to USDA Rural Development **\$12,570.09** (as of May 31, 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 February 2009 ("the debt"). *See* USDA Rural Development's Exhibits RX 1 through RX 10, plus Narratives.

7. The **Guarantee** (RX 1) establishes an **independent** obligation of Petitioner Houtman, "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. USDA Rural Development paid a loss claim of \$12,973.09 to the lender Chase on April 11, 2011 (RX 6, p. 10). RX 7 details the loss claim paid. After careful review of all of the evidence, I agree with USDA Rural Development's position.

9. The Due Date of the last payment made was April 1, 2009. RX 6, p. 5. The foreclosure sale date was May 13, 2010. RX 6, p. 5. RX 7 accurately shows that even after \$33,424.74 from the sale of the home was applied, Chase was still out \$12,973.09.

10. The actions of the lender Chase were to buy the home at the mortgage foreclosure sale for \$33,150.00 (*see* Sheriff's Deed, RX 3, p. 1), and thereafter, during the redemption period, to certify that \$33,424.76 was payment in full for the redemption from Sheriff's Sale on Foreclosure. RX 3, p. 2. Once Petitioner Houtman paid the \$33,424.76 (which was not enough to cover even the Principal amount of \$43,319.54) and redeemed the property, he had the right to sell the property. Nevertheless, Petitioner Houtman still owed Chase the deficiency (\$12,973.09), which Chase had the right to collect as unsecured debt. Chase claimed the \$12,973.09 from USDA Rural Development under the **Guarantee** (RX 1) .

Findings, Analysis and Conclusions

11. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Houtman and USDA Rural Development; and over the subject matter (administrative wage garnishment, which requires determining whether Petitioner Houtman owes a valid debt to USDA Rural Development).
12. USDA Rural Development paid a loss claim to the lender Chase, \$12,973.09 on April 11, 2011 (RX 6, p. 10). RX 7 details the loss claim. That amount, \$12,973.09, is what USDA Rural Development seeks to recover from Petitioner Houtman under the *Guarantee*. RX 1, RX 7; USDA Rural Development Narratives; and testimony.
13. Petitioner Houtman owes a valid debt to USDA Rural Development. When the lender Chase certified that \$33,424.76 was payment in full for the redemption from Sheriff's Sale on Foreclosure (RX 3, p. 2), that amount was not the total that Petitioner Houtman owed Chase. Rather, that amount was all that was needed to redeem the property. That amount is calculated as required under Michigan law, and it is based on what the lender Chase bid in, at the Sheriff's Sale on Foreclosure. After Petitioner Houtman redeemed the home, Petitioner Houtman still owed the lender Chase money, but the remaining debt was merely unsecured.
14. USDA Rural Development may collect administratively pursuant to a *Guarantee*, even where NO judgment has been entered against a borrower and NO personal deficiency has been established.
15. Against the \$12,973.09 deficiency / loss claim, Petitioner Houtman is credited with the collection from Treasury (an *offset*, the \$420.00 TOP payment February 17, 2012). See RX 10. Thus, Petitioner Houtman owes to USDA Rural Development \$12,570.09 as of May 31, 2012 [plus potential Treasury collection fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%), which would increase the current balance by \$3,519.63, to \$16,089.72.] See RX 10, p. 2.
16. Garnishment **up to 15%** of Petitioner Houtman's disposable pay is authorized. 31 C.F.R. § 285.11.
17. **No refund** to Petitioner Houtman of monies already collected or collected prior to implementation of this Decision will be ordered.
18. Repayment of the debt may also occur through *offset* of Petitioner Houtman's **income tax refunds** or other **Federal monies** payable to the order of Mr. Houtman.

Order

19. Until the debt is repaid, Petitioner Houtman 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).

20. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment **up to 15%** of Petitioner Houtman's disposable pay. 31 C.F.R. § 285.11.

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

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

Done at Washington, D.C.
this 15th day of October 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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