

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) [AWG]
George Stewart) Docket No. **13-0003**
)
Petitioner) **Decision and Order**

Appearances:

none by George Stewart, who represents himself (appears *pro se*); 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 on December 4, 2012. George Stewart, also known as George Stewart, Jr., the Petitioner (“Petitioner Stewart”), failed to participate. He represents himself (appears *pro se*).
2. The mobile phone number on Petitioner Stewart’s Consumer Debtor Financial Statement was disconnected. The phone number on Petitioner Stewart’s Hearing Request had an automated recording that said no calls were being taken at that time. Petitioner Stewart gave us no other way to contact him for the hearing, even though the Hearing Notice advised him to.
3. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”). USDA Rural Development participated, represented by Giovanna Leopardi.

Summary of the Facts Presented

4. Petitioner Stewart’s completed “Consumer Debtor Financial Statement” (filed November 14, 2012) is admitted into evidence, together with his Hearing Request dated September 13, 2012.

5. USDA Rural Development's Exhibits RX 1 through RX 5, plus Narrative, Witness & Exhibit List (filed November 30, 2012) are admitted into evidence, together with the testimony of Giovanna Leopardi.
6. The loan was made by the United States Department of Agriculture, Farmers Home Administration, in 1984, for a home in Mississippi. RX 1, pp. 1-10. Petitioner Stewart and his wife Gwendolyn Stewart, on January 20, 1995, signed a Deed of Trust for the home (RX 1, pp. 13-17), the loan having been assumed on that date. Petitioner Stewart then assumed the loan on March 23, 1995 ("the debt"). RX 1, pp. 11-12.
7. USDA Rural Development's position is that Petitioner Stewart owes to USDA Rural Development **\$14,963.21** as of November 28, 2012. After careful review of all of the evidence, I agree with USDA Rural Development's position.
8. The Notice of Acceleration dated October 21, 1998 (RX 2, pp. 14-16), indicates that the balance of the account was \$36,383.92 unpaid principal plus \$5,066.83 unpaid interest as of October 21, 1998. At the foreclosure sale on June 7, 1999, a third party bought the home. RX 3, p. 9. No interest has accrued since the proceeds were applied, in June 1999.
9. The proceeds, \$30,715.00, were applied first to pay recoverable costs that included unpaid taxes and unpaid insurance and the costs of sale (\$1,775.39); then applied to pay the unpaid interest, which by then was \$6,722.14; and then applied to pay \$22,217.47 of the principal. The remaining balance owed was \$14,166.45. To that amount, adjustments were made to add interest (\$69.28) and to add costs (\$727.48), resulting in **\$14,963.21** unpaid (excluding the potential remaining collection fees). *See* RX 4.
10. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$14,963.21**, would increase the balance by \$4,189.70, to \$19,152.91. [My calculation differs from that found on RX 5, p. 2 by nearly \$300.00].
11. Petitioner Stewart's Consumer Debtor Financial Statement shows that his current living expenses are minimal, and that his only income is Supplemental Security Income (SSI) of \$698.34 monthly. He pays \$300.00 monthly on a \$7,000.00 debt to Triple-B, a car payment. He is eligible for Medicaid.
12. It does not appear that Petitioner Stewart has any disposable pay that could be garnished to pay the debt. To prevent hardship, potential garnishment to repay the USDA Rural Development debt must be limited to **0%** of Petitioner Stewart's disposable pay. Petitioner Stewart's SSI will not be *offset* to pay the debt.
13. Petitioner Stewart, you may want to negotiate the disposition of the debt with

Treasury's collection agency.

Discussion

14. I recommend that Petitioner Stewart be granted a **financial hardship discharge** of the debt. Petitioner Stewart, this will require **you** to telephone Treasury's collection agency after you receive this Decision. To be considered (the decision whether to grant you a financial hardship discharge will be made by Treasury's collection agency), you will be required to provide, timely, all financial documentation requested. The toll-free number for you to call is **1-888-826-3127**. Petitioner Stewart, if you are not granted a financial hardship discharge (and it is difficult to qualify), 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. Petitioner Stewart, you may wish to include someone else with you in the telephone call when you call to negotiate.

Findings, Analysis and Conclusions

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

16. Petitioner Stewart owes the debt described in paragraphs 6 through 10.

17. **Garnishment is not authorized.** Garnishment in any amount would cause Petitioner Stewart financial hardship. 31 C.F.R. § 285.11.

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

19. Repayment of the debt may occur through *offset* of Petitioner Stewart's **income tax refunds** or other **Federal monies** payable to the order of Mr. Stewart. [Petitioner Stewart's SSI will not be *offset* to pay the debt.]

Order

20. Until the debt is repaid, Petitioner Stewart 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).

21. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment. 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 7th day of December 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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