

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	
	)	[AWG]
Elida O. Salazar, n/k/a	)	Docket No. <b>13-0001</b>
	)	
Elida Espinoza,	)	
	)	<b>Remand to USDA Rural Development and</b>
Petitioner	)	<b>Dismissal of Garnishment Proceeding and This Case</b>

Appearances:

none by Elida Espinoza, who represents herself (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. Elida Espinoza, formerly known as Elida O. Salazar, the Petitioner (“Petitioner Espinoza”), failed to participate. She represents herself (appears *pro se*).

2. Petitioner Espinoza’s Hearing Request had no phone number. Petitioner Espinoza’s letter dated 11/06/12 (filed November 16, 2012) states that her cell phone was disconnected for non-payment. Petitioner Espinoza gave us no way to contact her for the hearing, even though the Hearing Notice (especially paragraphs 14 and 18) advised her 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 Espinoza’s letter and accompanying documents (filed November 16, 2012) are admitted into evidence, together with her Hearing Request (date stamped September 20, 2012).

5. USDA Rural Development's Exhibits RX 1 through RX 5, plus Narrative, Witness & Exhibit List (filed October 22, 2012), and Narrative, Witness & Exhibit List containing Amended Narrative (filed October 31, 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 1975, for a home in Texas. RX 1. Petitioner Espinoza and her husband, Federico Salazar, Jr., on March 7, 1975, signed a Deed of Trust for the home. RX 1. The amount borrowed was \$20,200.00, but the loan became delinquent and was reamortized, twice.

7. Reamortizations made the loan current, by adding the delinquent amount to the principal balance. See the notes on RX 1, p. 2, showing (a) Reamortization in 1990 which made the principal amount \$22,859.66; and (b) Reamortization in 1993 which made the principal amount \$30,668.58. Reamortization did not change the total amount owed, which all became principal.

8. Because of the reamortizations, more principal was owed on January 2, 1998 than had been owed at the beginning: \$30,660.00 principal owed. RX 2. The Notice of Acceleration dated January 2, 1998 (RX 2, pp. 1-2), indicates that the balance of the account was \$30,660.00 unpaid principal plus \$7,988.92 unpaid interest as of January 2, 1998.

9. The home was not foreclosed on, because "valueless lien" was declared in April 1999. RX 3, p. 3.

10. The total owed in April 1999 was \$51,196.99. RX 3, p. 4; RX 4. There was \$30,660.00 unpaid principal. RX 2, RX 4. The unpaid interest, by then, was \$11,199.83. RX 3, p. 4; RX 4. The unpaid recoverable costs (including unpaid taxes, unpaid insurance, and other costs), were \$9,337.16. RX 4. When these amounts were added together, the total owed was \$51,196.99. RX 4. No additional interest has accrued since then, in April 1999.

11. Income tax refunds were intercepted (*offset*) to pay the debt, and a stimulus payment was intercepted (*offset*) to pay the debt, resulting in **\$48,272.07** unpaid (excluding the potential remaining collection fees). See RX 4, 5. USDA Rural Development's position is that Petitioner Espinoza owes to USDA Rural Development **\$48,272.07** as of October 19, 2012. RX 5. After careful review of all of the evidence, I agree with USDA Rural Development's position.

12. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$48,272.07**, would increase the balance by \$13,516.18, to \$61,788.25. RX 5, p. 2.

13. Petitioner Espinoza's letter and accompanying documents (filed November 16, 2012) make clear that she has health problems and very limited means. She reports that her income is social security benefits, and that she retired in April 2012 due to health problems. Petitioner Espinoza, you may want to consult with an attorney who has bankruptcy expertise.

14. Petitioner Espinoza has never had an opportunity to negotiate with USDA Rural Development. Even the Notice of Acceleration did not reach her, in 1998. RX 2. Petitioner Espinoza wrote in her Hearing Request, "This is the very first time I hear about this! Please explain!!"

#### Findings, Analysis and Conclusions

15. Petitioner Espinoza should have her "debt settlement" opportunity with USDA Rural Development; that opportunity should and will be restored. I have determined to REMAND this case to USDA Rural Development to begin the "debt settlement" process.

#### Order

16. Until the debt is repaid, Petitioner Espinoza shall give notice to USDA Rural Development or those collecting on its behalf, of any changes in her mailing address; delivery address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).

17. USDA Rural Development will recall the debt from the U.S. Treasury for further servicing by USDA Rural Development. Thus, this case is REMANDED to USDA Rural Development to give Petitioner Espinoza the opportunity to negotiate a repayment plan with USDA Rural Development. USDA Rural Development will begin the process by sending a letter to Petitioner Espinoza.

18. Please notice, Petitioner Espinoza, every detail in the letter you are going to receive from USDA Rural Development, including your obligation to submit a request to the Centralized Servicing Center (part of USDA Rural Development) for a written repayment agreement. You, Petitioner Espinoza, as you complete the forms and provide the requested documentation, will need to determine what to offer: total amount, as well as installments. Even though you have written that you have had to ask your children for help with your expenses, and even though payment of any amount may cause you severe financial hardship, I encourage you to make an offer that is larger than zero.

19. If NO agreed repayment plan between Petitioner Espinoza and USDA Rural Development happens, or there is a default in meeting repayment plan requirements, and if

the debt is consequently submitted to the U.S. Treasury for Cross Servicing, Petitioner Espinoza will be entitled anew to have a hearing.

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

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

22. The Garnishment Proceeding and this case are DISMISSED, without prejudice to Petitioner Espinoza to request a hearing timely, should garnishment be noticed.

Copies of this "Remand to USDA Rural Development and Dismissal of Garnishment Proceeding and This Case" shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.  
this 11<sup>th</sup> day of December 2012

s/ Jill S. Clifton

Jill S. Clifton  
Administrative Law Judge

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