

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Allison Mossberger)	Docket No. 12-0637
)	
Petitioner)	Decision and Order

Appearances:

Allison Mossberger, the Petitioner, representing herself (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 held on November 7, 2012. Ms. Allison Mossberger, also known as Allison L. Mossberger (“Petitioner Mossberger”) participated, representing herself (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 Mossberger’s documents filed on October 12, 2012 are admitted into evidence, together with the testimony of Petitioner Mossberger. The documents filed on October 12 include Petitioner’s “Consumer Debtor Financial Statement” and additional documents showing payments deferred and claims of financial hardship. Also admitted into evidence is Petitioner’s Hearing Request dated August 13, 2012.
4. USDA Rural Development’s Exhibits RX 1 through RX 10, plus Narrative, Witness & Exhibit List, were filed on October 9, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner.

5. The first issue is whether Petitioner Mossberger owes to USDA Rural Development a balance of **\$40,427.49** (as of October 2, 2012) in repayment of a United States Department of Agriculture / Rural Development / Rural Housing Service *Guarantee* (see RX 1, esp. p. 2) for a loan made on January 5, 2005 by Draper and Kramer Mortgage Corp., for a home in Illinois, the balance of which is now unsecured (“the debt”). That alleged debt was \$51,290.49 (see RX 7), until Petitioner Mossberger’s income tax refund (\$9,992.00) was *offset* and her co-borrower’s income tax refund (\$905.00) was *offset*. See RX 10. Her co-borrower is Nickolas Zitek.

6. Draper and Kramer Mortgage Corp. sold the loan to JP Morgan Chase Bank, N.A., on the day the loan was made. RX 2, p. 5. JP Morgan Chase Bank, N.A. (the Holding Lender) is the parent company of Chase Home Finance LLC (the Servicing Lender). RX 3; RX 6, pp. 3-4. I refer to these entities as Chase, or the lender.

7. Petitioner Mossberger’s promise to pay USDA Rural Development, if USDA Rural Development paid a loss claim to the lender, is contained on the same page of the *Guarantee* that Petitioner Mossberger signed, and is recited in the following paragraph, paragraph 8.

8. The *Guarantee* establishes an **independent** obligation of Petitioner Mossberger, “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. USDA Rural Development paid Chase \$51,290.49 on April 12, 2010. RX 6, p. 8; RX 7. This, the amount USDA Rural Development paid, is the amount USDA Rural Development seeks to recover from Petitioner Mossberger under the *Guarantee* (less the amounts already collected from Petitioner Mossberger and her co-borrower, through *offset*). See RX 10.

10. Potential Treasury collection fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$40,427.49** would increase the current balance by \$11,319.69, to \$51,747.18. See RX 10, p. 2.

11. The amount Petitioner Mossberger borrowed from Draper and Kramer Mortgage Corp. on January 5, 2005, was \$116,800.00. RX 2, pp. 1-3. The Due Date of the Last Payment Made was September 1, 2008. RX 6, p. 4. Petitioner Mossberger wrote (RX 8)

and testified that the co-borrower, Nickolas Zitek, agreed to make all the payments; he stayed in the home when she left the home. She testified she was in the home only 6 weeks.

12. Foreclosure was initiated on February 13, 2009. RX 6, p. 4. At the Foreclosure Sale on September 30, 2009, the lender was not outbid, so the home sold to the lender, Chase. Chase then sold the REO (real estate owned) on January 8, 2010, for \$80,001.00. RX 6, p. 5; RX 7.

13. Getting the security (the home) resold was an expensive process. First, all the costs of foreclosure were incurred, and Petitioner Mossberger is expected to reimburse for those costs; because no one outbid the lender at the foreclosure sale, all the costs to sell the REO were then incurred, and Petitioner Mossberger is expected to reimburse for those costs as well. Meanwhile, interest continued to accrue, taxes continued to become due, and insurance premiums continued to be paid. Interest alone from September 1, 2008 (the Due Date of the Last Payment Made) until January 8, 2010 (when the REO was sold for \$80,001.00), was \$9,973.20. RX 7. No additional interest has accrued since January 8, 2010.

14. Interest stopped accruing when the proceeds of sale (\$80,001.00) were applied to the debt. Collections from Treasury since then (from Petitioner Mossberger, and from her co-borrower, through *offset*), leave **\$40,427.49** unpaid as of October 2, 2012 (excluding the potential remaining collection fees). See RX 10 and USDA Rural Development Narrative, plus Michelle Tanner's testimony.

15. Does Petitioner Mossberger owe to USDA Rural Development a balance of **\$40,427.49** (as of October 2, 2012) in repayment of a United States Department of Agriculture / Rural Development / Rural Housing Service *Guarantee* (see RX 1, esp. p. 2)? I conclude that she does. My reasons are the same as those found in RX 8, p. 3.

16. Although Petitioner Mossberger may well recover the amounts she has paid on the debt from her co-borrower, Nickolas Zitek, she remains legally liable to repay USDA Rural Development. The debt is Petitioner Mossberger's and her co-borrower's joint-and-several obligation. When Petitioner Mossberger entered into the borrowing transaction eight years ago with her co-borrower, Nickolas Zitek, certain responsibilities were fixed, as to each of them.

17. The second issue is whether Petitioner Mossberger can withstand garnishment without it causing financial hardship. Petitioner Mossberger's Consumer Debtor Financial Statement and other filings and her testimony provide the evidence necessary for me to evaluate the factors to be considered under 31 C.F.R. § 285.11. Petitioner Mossberger is responsible to support not only herself, but also her three children. She does have the help of child support, and help from her parents, but her day care expenses alone cost roughly

\$1,300.00 per month. Petitioner Mossberger makes good money in car sales, but some seasons are better than others. Further, she was on maternity leave for nearly half-a-year in 2011 with her youngest child, and she is still catching up financially. She has had to adjust some payment schedules and carries unpaid credit card debt. Petitioner Mossberger's disposable pay (within the meaning of 31 C.F.R. § 285.11) is not sufficient to meet all the reasonable demands on that pay. [Disposable income is gross pay minus income tax, Social Security, Medicare, and health insurance withholding; and in certain situations minus other employee benefits contributions that are required to be withheld.] 31 C.F.R. § 285.11.

18. Garnishment at 15% of Petitioner Mossberger's disposable pay would cause Petitioner Mossberger financial hardship. I find that Petitioner Mossberger's earnings, plus the child support, permit her to pay, after meeting her needs and those of her dependent children, garnishment of **no more than 5%** of her disposable pay. Consequently, to prevent further hardship, potential garnishment to repay "the debt" (*see* paragraph 5) shall be limited to **no more than 5%** of Petitioner Mossberger's disposable pay. 31 C.F.R. § 285.11. Further, even that should begin **no sooner than July 2013**.

19. Petitioner Mossberger is responsible and able to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

20. Petitioner Mossberger, I do not have reason to invalidate your obligation under the **Guarantee**. Petitioner Mossberger, you may want to appeal my Decision in U.S. District Court.

21. Garnishment of Petitioner Mossberger's disposable pay is authorized in limited amount, **none** through **June 2013**; then **beginning July 2013, up to 5%** of Petitioner Mossberger's disposable pay. *See* paragraphs 17 & 18. Petitioner Mossberger, you may want to telephone Treasury's collection agency to **negotiate** repayment of the debt, after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Mossberger, 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 ask that **the debt be apportioned between you and your co-borrower**. Petitioner Mossberger, 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 Mossberger, you may wish to include someone else with you in the telephone call if you call to negotiate.

Findings, Analysis and Conclusions

22. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Mossberger and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.
23. Petitioner Mossberger owes the debt described in paragraphs 5 through 16.
24. To prevent financial hardship, **garnishment is not authorized through June 2013**; thereafter, garnishment is authorized, **up to 5%** of Petitioner Mossberger's disposable pay. 31 C.F.R. § 285.11.
25. I am **NOT** ordering any amounts already collected prior to implementation of this Decision, whether through *offset* or garnishment of Petitioner Mossberger's pay, to be returned to Petitioner Mossberger.
26. Repayment of the debt may occur through *offset* of Petitioner Mossberger's **income tax refunds** or other **Federal monies** payable to the order of Ms. Mossberger.

Order

27. Until the debt is repaid, Petitioner Mossberger 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).
28. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment of Petitioner Mossberger's disposable pay **through June 2013**. **Beginning July 2013**, garnishment **up to 5%** of Petitioner Mossberger's disposable pay is authorized. 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 18th day of December 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Michelle Tanner, Appeals Coordinator
USDA / RD Centralized Servicing Center
Bldg 105 E, FC-244
4300 Goodfellow Blvd
St Louis MO 63120-1703
michelle.tanner@stl.usda.gov

314-457-5775 phone
314-457-4547 FAX

Hearing Clerk's Office
U.S. Department of Agriculture
South Building Room 1031
1400 Independence Avenue, SW
Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776