

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Stacy Wander, n/k/a)	Docket No. 12-0497
)	
Stacy Sassen,)	
)	
Petitioner)	Decision and Order

Appearances:

James W. Hess, Esq., Elk River, Minnesota, for Stacy Sassen, formerly known as Stacy Wander, the Petitioner; 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 September 5 and 26, 2012. Stacy Sassen, formerly known as Stacy Wander (Petitioner Sassen) participated, represented by James W. Hess, Esq.
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 Sassen’s documents (filed September 4, 20, and 26, 2012), together with the Milinkovich opinion dated October 17, 2012 (Exhibit A), together with Petitioner Sassen’s Hearing Request dated June 7, 2012, are admitted into evidence, together with the testimony of Petitioner Sassen.

4. USDA Rural Development's Exhibits RX 1 through RX 11, plus Narrative, Witness & Exhibit List (filed July 17, 2012) and supplemental Narratives (filed September 26, 2012 and October 5, 2012), together with Notice of Mortgage Foreclosure Sale, and the RD Instruction 1980, are admitted into evidence, together with the testimony of Giovanna Leopardi.

5. My exhibit, ALJX 1 (filed October 17, 2012), which is the Lamoreaux Form 1099-A, is admitted into evidence.

6. USDA Rural Development's position is that Petitioner Sassen owes to USDA Rural Development **\$61,280.38** (as of July 13, 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 in 2008 ("the debt"). The loan was made by Wells Fargo Bank, N.A. ("Wells Fargo"). RX 2.

7. Petitioner Sassen's position is that Petitioner Sassen owes **nothing** to USDA Rural Development and is **due a refund** for the amount taken from her, because there is no valid debt. Petitioner Sassen's income tax refund was intercepted (*offset*), \$2,386.00 taken in February 2012 (see RX 10, p. 1).

8. Petitioner Sassen testified that she understood from Wells Fargo that there was to be forgiveness of debt of the difference between the balance owed (\$157,769.84 principal) and the proceeds from sale of the home.

9. Wells Fargo did not need to look to Petitioner Sassen because it had the **Guarantee**. Wells Fargo looked to USDA Rural Development to be made whole under the **Guarantee**, and its claim was paid, \$63,666.38, on August 16, 2011. RX 6, p. 10. This case is an *administrative* collection action brought by an agency of the United States government, USDA Rural Development. The rules that apply here, concerning a **Guarantee** by which Petitioner Sassen promised to reimburse USDA Rural Development if it paid a loss claim to Wells Fargo, are different from the rules that would have applied in Minnesota courts if Wells Fargo sought to collect a personal deficiency. *Administrative* collections such as this do not require a valid judgment to support garnishment or *offset*.

10. After careful review of all of the evidence and the excellent argument by Petitioner Sassen's attorney, James W. Hess, Esq., I agree with USDA Rural Development's position. This is in part because of the independent nature of the **Guarantee**; and in part because an agency of the United States government collecting administratively has rules that differ from those of the various jurisdictions in which the loans were made. Even if Petitioner Sassen was protected under Minnesota law from personal deficiency being entered against her in

favor of Wells Fargo, USDA Rural Development may still collect from her administratively, pursuant to the *Guarantee*.

11. Petitioner Sassen owes to USDA Rural Development **\$61,280.38** (as of July 13, 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 in 2008, the balance of which is now unsecured (“the debt”). Petitioner Sassen borrowed to buy a home in Minnesota.

12. The *Guarantee* (RX 1) establishes an **independent** obligation of Petitioner Sassen, “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.

13. Petitioner Sassen borrowed \$159,000.00 on August 14, 2008 to buy the home. RX 2. The Due Date of Last Payment Made was June 1, 2009. RX 6, p. 4. Foreclosure was initiated on April 26, 2010. RX 6, p. 5.

14. At the foreclosure sale on August 12, 2010, the lender Wells Fargo bid \$126,650.00 and acquired the home, which became REO (Real Estate Owned). RX 3; RX 6, p. 5. From the date of the foreclosure sale, six months was allowed for redemption. RX 3. Thus, Wells Fargo would obtain marketable title February 14, 2011. RX 3; RX 6, p. 5; see note at bottom of RX 6, p. 9. The six-month marketing period would expire August 13, 2011. Wells Fargo sold the home for \$135,000.00 on April 20, 2011. RX 5, pp. 5-8.

15. USDA Rural Development reimbursed Wells Fargo \$63,666.38 on August 16, 2011. RX 6, p. 10. RX 7 details the loss claim paid under the *Guarantee*, showing how the debt became \$63,666.38. USDA Rural Development’s payment of \$63,666.38 is the amount USDA Rural Development seeks to recover from Petitioner Sassen under the *Guarantee*. RX 8.

16. Petitioner Sassen’s income tax refund of \$2,386.00 was intercepted and applied to reduce the debt (*offset*). As of July 13, 2012, Petitioner Sassen’s debt had been reduced to **\$61,280.38**. RX 10.

17. Interest stopped accruing on April 20, 2011. Repayment of the debt is more manageable with no interest accruing. When income tax refunds are *offset*, the costs of collection to be paid by Petitioner Sassen, are the flat fee (now \$17.00). These costs can be

considerably lower than the percentage (up to 28%) of the garnishment or voluntary payment applied to collection costs (before the balance is applied to reduce the debt).

18. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$61,280.38**, would increase the balance by \$17,158.51, to \$78,438.89. RX 10, p. 2.

Findings, Analysis and Conclusions

19. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Sassen and USDA Rural Development; and over the subject matter (administrative wage garnishment, which requires determining whether Petitioner Sassen owes a valid debt to USDA Rural Development).

20. I determine that Petitioner Sassen does owe the debt described in paragraphs 6 through 18.

21. Petitioner Sassen's attorney, James W. Hess, Esq., argued that Wells Fargo lost its opportunity to pursue a deficiency under Minnesota law, by choosing foreclosure **by advertisement** which, under Minnesota law, required it to forego obtaining a deficiency (instead of choosing foreclosure **by action**, which would have included establishing a deficiency). I conclude that the debt here is based not on Wells Fargo establishing a deficiency, but instead on Petitioner Sassen's promise to reimburse contained in the **Guarantee**, Form RD 1980-21. USDA Rural Development here, in this *administrative* collection action brought by an agency of the United States government, is not subject to state foreclosure laws or deficiency judgment statutes.

22. Mr. Hess argued that the Form 1099-A utilized by Wells Fargo (filed on September 20, 2012) **is** further proof of debt forgiveness, and the expert opinion of Peter L. Milinkovich dated October 17, 2012 (Exhibit A) supports the argument. The Wells Fargo Form 1099-A shows that the lender acquired the property on February 14, 2011 (when the 6-month redemption period expired and Wells Fargo obtained marketable title). It shows the "Balance of principal outstanding" to be \$157,769.84, and the "Fair market value of property" to be \$126,650.00 (Wells Fargo's bid at the foreclosure sale). Thus, a deficiency is suggested. Further, the box is checked, where the Form instructs, "Check here if the borrower was personally liable for repayment of the debt." The Form 1099-A is **not** a Form 1099-C. A Form 1099-C which would suggest that the remainder of the debt has been canceled.

23. Keeping Mr. Hess's argument and the evidence from Peter L. Milinkovich in mind, I compare the Wells Fargo Form 1099-A with the Lamoreaux Forms 1099-A (ALJX-1, filed October 17, 2012), prepared by Chase Home Finance LLC ("Chase"). The differences are

striking. The Chase Form 1099-A shows the “Balance of principal outstanding” to be \$47,565.40, and the “Fair market value of property” to be \$65,000.00, **not** suggesting a deficiency. Further, the box “No” is checked, where the Form asks, “Was borrower personally liable for repayment of the debt.” So, even though the Lamoreauxs won their administrative wage garnishment cases, the issues in their cases are distinguishable from the issues here. The Lamoreaux cases are found on the USDA website, search “OALJ” then choose “Miscellaneous Orders” 2012.

http://www.dm.usda.gov/oaljdecisions/120518_12-0312_OD_JamesLamoreaux.pdf

http://www.dm.usda.gov/oaljdecisions/120518_12-0311_OD_JenniferLamoreaux.pdf

24. I conclude that Form 1099s must be evaluated in context with all the other evidence to determine whether forgiveness or cancellation of the remaining debt happened. Here, I conclude that the debt was **not** forgiven and **not** canceled.

25. The Notice of Mortgage Foreclosure Sale (filed September 26, 2012) does **not** lead Petitioner Sassen to believe that no deficiency will be established. Thus, the issues in the Garza administrative wage garnishment case, which Garza won, are distinguishable from the issues here. The Garza case is found on the USDA website, search “OALJ” then choose “Initial Decisions” 2012.

http://www.dm.usda.gov/oaljdecisions/120828_12-0346_DO_AWG_ElvaGarza.pdf

26. The authority of USDA Rural Development to collect here can be found in the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (DCIA) (31 U.S.C. § 3701 *et seq.*). Under 31 U.S.C. § 3701(b), I find that Petitioner Sassen does owe the balance of **\$61,280.38** (as of July 13, 2012) to the United States, on account of a loan guaranteed by the Government. Next, I find that the regulations that apply here are 7 C.F.R. Part 3 (Debt Management), particularly 7 C.F.R. § 3.53, especially 7 C.F.R. § 3.53(d) and (e).

27. Petitioner Sassen’s Consumer Debtor Financial Statement, payroll data, and other financial documentation (filed September 4, 2012) are thoroughly and beautifully presented. Petitioner Sassen has a demanding job, and she is well-compensated. She is responsible for three minor children in addition to herself. At present her reasonable and necessary living expenses consume her disposable pay plus child support. To prevent financial hardship, garnishment is authorized, as follows: through 2013, **no** garnishment. During 2014, garnishment **up to 7%** of Petitioner Sassen’s disposable pay; and beginning 2015, garnishment **up to 15%** of Petitioner Sassen’s disposable pay. 31 C.F.R. § 285.11.

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

29. Repayment of the debt may occur through *offset* of Petitioner Sassen's **income tax refunds** or other **Federal monies** payable to the order of Ms. Sassen (whether or not garnishment is authorized).

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

Discussion

31. I encourage **Petitioner Sassen and Treasury's collection agency** to negotiate the repayment of the debt. Petitioner Sassen, 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 Sassen, 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 Sassen, 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 Sassen, you may wish to include someone else with you in the telephone call if you call to negotiate.

Order

32. Until the debt is repaid, Petitioner Sassen 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).

33. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment through 2013. During 2014, garnishment **up to 7%** of Petitioner Sassen's disposable pay is authorized; and beginning 2015, garnishment **up to 15%** of Petitioner Sassen'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 28th day of December 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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