

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re: ) [AWG]  
 ) Docket No. **13-0075**  
Kathy Dodd )  
 ) **Remand to USDA Rural Development and**  
Petitioner ) **Dismissal of Garnishment Proceeding and This Case**

Appearances:

Kathy Dodd, 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 January 4, 2013. Kathy Dodd, also known as Kathy A. Dodd, full name Kathy Ann Dodd, the Petitioner (“Petitioner Dodd”), participated, representing herself (appearing *pro se*). Petitioner Dodd’s husband and co-borrower, John G. Dodd, also participated.

2. 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

3. Petitioner Dodd’s Exhibits 1 through 3, plus Narrative, Witness & Exhibit List (submitted by email dated December 20, 2012 and filed December 21, 2012), are admitted into evidence, together with her Hearing Request dated November 5, 2012 with accompanying documents, together with the testimony of Petitioner Dodd and her husband and co-borrower, John G. Dodd.

4. USDA Rural Development's Exhibits RX 1 through RX 11, plus Narrative, Witness & Exhibit List (filed December 19, 2012), are admitted into evidence, together with the testimony of Giovanna Leopardi.
5. The first issue is whether Petitioner Dodd owes to USDA Rural Development a balance of **\$62,218.01** (as of December 17, 2012, *see* RX 10) 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 October 17, 2008 by JP Morgan Chase Bank, N.A., for a home in Georgia, the balance of which is now unsecured ("the debt"). RX 2.
6. The debt owed to USDA Rural Development was \$65,426.01 (*see* RX 6, p. 11), until an income tax refund was *offset* in about March 2012, yielding, after the \$17.00 flat fee was subtracted, \$3,208.00 to be paid on the debt. *See* RX 9, p. 2.
7. JP Morgan Chase Bank, N.A. (the Holding Lender) is the parent company of Chase Home Finance LLC (the Servicing Lender). RX 6. I refer to these entities as Chase, or the lender.
8. Petitioner Dodd'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* (RX 1) that Petitioner Dodd signed, and is recited in the following paragraph, paragraph 9.
9. The *Guarantee* establishes an **independent** obligation of Petitioner Dodd, "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.
10. USDA Rural Development paid Chase \$65,426.01 on August 22, 2011. RX 6, p. 11; RX 7. This, the amount USDA Rural Development paid, is the amount USDA Rural Development seeks to recover from Petitioner Dodd under the *Guarantee* (less the amount already collected from Petitioner Dodd and her husband and co-borrower, John Dodd, through *offset*). RX 10.
11. Potential Treasury collection fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$62,218.01** would increase the current balance by \$17,421.04, to \$79,639.05. *See* RX 10, p. 2.

12. The Dodds, through a National Mortgage Settlement (*see* Petitioner Dodd's Exhibits 1 through 3 and Hearing Request documents) have a claim pending against Chase for illegally foreclosing on them. Petitioner Dodd and her husband and co-borrower, John Dodd, testified that they had kept the loan payments current until Petitioner Dodd lost her job. The Dodds testified that the loan was still current when the Dodds requested loan modification. The Dodds testified that Chase instructed them to stop making payments, that everything was frozen, while their request for loan modification was pending. The Dodds testified that Chase explained that there was a high rate of loan modifications, and Chase was waiting for approval on the underwriter's desk. At one point, they testified, Chase told the Dodds they had never "prequalified" so they re-qualified. Then, in the middle of the loan modification process, the Dodds testified, Chase kicked them out of the house. [The Dodds had 4 children at home at the time.] Then, the Dodds testified, Chase instructed them that they could move back in, but only if they paid \$1,000.00 as good faith toward paper work (the money would not be applied toward the loan balance). The Dodds testified that they declined, and Chase then told them they were not eligible for loan modification because they did not live in the house anymore.

13. Foreclosure was initiated on November 3, 2009. RX 6, p. 6. At the Foreclosure Sale on April 6, 2010, the lender was not outbid, so the home sold to the lender, Chase. Chase did not sell the REO (real estate owned) within six months, so the liquidation value of \$65,000.00 was what the loss claim was based on. The appraisal that established \$65,000.00 as the liquidation value, as of November 17, 2010, is at RX 4, pp. 6-23. The home did eventually sell, on April 5, 2011, for \$64,510.00. RX 5, p. 6; RX 6, p. 3.

14. Getting the security (the home) resold was an expensive process, First, all the costs of foreclosure were incurred, and Petitioner Dodd 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 Dodd 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 May 1, 2009 (the Due Date of the Last Payment Made) until November 17, 2010 (the date of the liquidation value appraisal, *see* RX 5, p. 4), was \$13,543.28. RX 7. No additional interest has accrued since November 17, 2010.

15. After USDA Rural Development paid Chase \$65,426.01 (RX 7), the collection by Treasury from Petitioner Dodd and her co-borrower, through *offset*, left **\$62,218.01** unpaid as of December 17, 2012 (excluding the potential remaining collection fees). *See* RX 10 and USDA Rural Development Narrative, plus Giovanna Leopardi's testimony. Does Petitioner Dodd owe to USDA Rural Development a balance of **\$62,218.01** (as of December 17, 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. Petitioner Dodd and her husband and co-borrower, John Dodd, do not contest that.

16. The second issue is whether Petitioner Dodd shall have another opportunity to negotiate with USDA Rural Development (the “debt settlement” process). When the Dodds received the USDA Rural Development letters dated October 8, 2011 (RX 8), they failed to grasp the significance of the opportunity to engage in debt settlement, including the opportunity to agree to a repayment plan, in large part because of their ongoing struggle to recover from Chase.

#### Findings, Analysis and Conclusions

17. Petitioner Dodd **and Petitioner Dodd’s husband and co-borrower, John G. Dodd** should have another “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 anew the “debt settlement” process with each of them.

#### Order

18. Until the debt is repaid, Petitioner Dodd 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).

19. USDA Rural Development will recall the debt, for both Petitioner Dodd **and Petitioner Dodd’s husband and co-borrower, John G. Dodd**, from the U.S. Treasury for further servicing by USDA Rural Development. Thus, this case is REMANDED to USDA Rural Development to give Petitioner Dodd (and her husband and co-borrower) the opportunity to negotiate a repayment plan with USDA Rural Development. USDA Rural Development will begin the process by sending a letter to each of the Dodds.

20. Please notice, Petitioner Dodd, 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 Dodd, as you complete the forms and provide the requested documentation, will need to determine what to offer: total amount, as well as installments.

21. If NO agreed repayment plan between Petitioner Dodd 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 Dodd will be entitled anew to have a hearing (**not** on the issue of the validity of the debt, but only on the issue of whether she can withstand garnishment without it causing financial hardship).

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

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

24. The Garnishment Proceeding and this case are DISMISSED, without prejudice to Petitioner Dodd 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 7<sup>th</sup> day of January 2013

s/ Jill S. Clifton

Jill S. Clifton  
Administrative Law Judge

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