

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Becky Vance)	Docket No. 12-0433
)	
Petitioner)	Decision and Order

Appearances:

none, by Becky Vance, the Petitioner, 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 24, 2013, having been postponed at the request of Cobb Young, Esq., of Joplin, Missouri, from August 7, 2012. Becky Vance, the Petitioner (“Petitioner Vance”), failed to participate in the hearing. [Petitioner Vance failed to participate by telephone. Petitioner Vance failed to respond to the “Hearing Rescheduled” notice, which was filed and sent to her in December 2012, which directed her to advise us of the phone number we could use to reach her for the hearing. Petitioner Vance did not answer at the phone number we had for her.]

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 Vance’s Hearing Request dated April 16, 2012, with all attachments, is admitted into evidence.

4. USDA Rural Development’s Exhibits RX 1 through RX 11, plus Narrative, Witness & Exhibit List, were filed on June 12, 2012, and are admitted into evidence, together with

the testimony of Giovanna Leopardi.

5. USDA Rural Development's position is that Petitioner Vance owes to USDA Rural Development **\$30,720.37** (as of about January 24, 2013), in repayment of a United States Department of Agriculture / Rural Development / Rural Housing Service **Guarantee** (see RX 1, esp. p. 2) for the loan made by JP Morgan Chase Bank, N.A. on March 5, 2009 ("the debt"). RX 2. Chase Home Finance, LLC became the holder of or agent for the holder of the indebtedness. JP Morgan Chase Bank, N.A. is the parent company of Chase Home Finance LLC (the Servicing Lender). I refer to these entities as Chase, or the lender.

6. Petitioner Vance borrowed \$106,671.00 to buy the home in Missouri, the balance of which is now unsecured ("the debt"). Petitioner Vance'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 Vance signed, and is recited in the following paragraph, paragraph 7.

7. The **Guarantee** establishes an **independent** obligation of Petitioner Vance, "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.

8. USDA Rural Development did pay a loss claim on the requested loan to the lender, \$31,238.15 on December 27, 2010. RX 6, p. 9; RX 7. This, the amount USDA Rural Development paid, is the amount USDA Rural Development seeks to recover from Petitioner Vance under the **Guarantee** (less the amounts already collected from Petitioner Vance, through **offset**). See RX 10, especially p. 1.

9. Potential Treasury collection fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$30,720.37** would increase the current balance by \$8,601.70, to \$39,322.07. See RX 10, p. 2.

10. The amount Petitioner Vance borrowed on March 5, 2009 was \$106,671.00. RX 2. The Due Date of the Last Payment Made was August 1, 2009. RX 6, p. 4.

11. Foreclosure was initiated on January 15, 2010. RX 6, p. 5. At the Foreclosure Sale on February 8, 2010, the lender was not outbid, so the home sold to the lender, Chase, for \$87,975.00. Chase then sold the REO (real estate owned) on June 2, 2010, for \$94,000.00. RX 6, pp. 5-6; RX 7.

12. Getting the security (the home) resold was an expensive process, First, all the costs of foreclosure were incurred, and Petitioner Vance 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 Vance is expected to reimburse for those costs as well. RX 7 shows that the lender expenses to sell the property were \$13,291.70. Meanwhile, interest continued to accrue, taxes continued to become due, and insurance premiums continued to be paid. Interest alone from August 1, 2009 (the Due Date of the Last Payment Made) until near the end of June 2010 (28 days after the REO was sold), was \$5,677.20. RX 7. No additional interest has accrued since near the end of June 2010 and none will accrue, which makes repaying the debt more manageable.

13. Collections from Treasury (from Petitioner Vance, through *offset*), leave **\$30,720.37** unpaid as of about January 24, 2013 (excluding the potential remaining collection fees). See RX 10, especially p. 1, and USDA Rural Development Narrative, plus Giovanna Leopardi's testimony.

14. The second issue is whether Petitioner Vance can withstand garnishment without it causing financial hardship. Petitioner Vance has provided no evidence, no Consumer Debtor Financial Statement, no wage statements, no testimony - - nothing - - for me to evaluate the factors to be considered under 31 C.F.R. § 285.11. Consequently, I must assume Petitioner Vance can withstand garnishment at 15% of Petitioner Vance's disposable pay without it causing Petitioner Vance financial hardship. 31 C.F.R. § 285.11.

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

Discussion

16. Garnishment of Petitioner Vance's disposable pay is authorized. See paragraph 14. Petitioner Vance, 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 Vance, 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 Vance, you may wish to include someone else with you in the telephone call if you call to negotiate.

Findings, Analysis and Conclusions

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

18. Petitioner Vance owes the debt described in paragraphs 5 through 13.
19. Garnishment is authorized, **up to 15%** of Petitioner Vance's disposable pay. 31 C.F.R. § 285.11.
20. I am **NOT** ordering any amounts already collected prior to implementation of this Decision, whether through *offset* or garnishment of Petitioner Vance's pay, to be returned to Petitioner Vance.
21. Repayment of the debt may also occur through *offset* of Petitioner Vance's **income tax refunds** or other **Federal monies** payable to the order of Ms. Vance.

Order

22. Until the debt is repaid, Petitioner Vance 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).
23. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment of Petitioner Vance's disposable pay, **up to 15%** of Petitioner Vance's disposable pay. 31 C.F.R. § 285.11.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties, with a courtesy copy sent also to Cobb Young, Esq.

Done at Washington, D.C.
this 25th day of January 2013

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

courtesy copy to:

Cobb Young, Esq.
333 West 5th St
Joplin MO 64801

417-623-4000 phone
417-623-6635 FAX

Giovanna Leopardi, Appeals Coordinator
USDA / RD Centralized Servicing Center
Bldg 105 E, FC-244
4300 Goodfellow Blvd
St Louis MO 63120-1703

giovanna.leopardi@stl.usda.gov

314-457-5767 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