

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
)
Heather S. Gabriel,) [AWG]
) Docket No. **13-0092**
f/k/a Heather Baker,)
) **Remand to USDA Rural Development and**
Petitioner) **Dismissal of Garnishment Proceeding and This Case**

Appearances:

Heather S. Gabriel, formerly known as Heather Baker, 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 February 4, 2013. Heather S. Gabriel, formerly known as Heather Baker, the Petitioner (“Petitioner Gabriel”), 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. USDA Rural Development is represented by Giovanna Leopardi.

Summary of the Facts Presented

3. Petitioner Gabriel’s Consumer Debtor Financial Statement (filed January 9, 2013, with pay stub dated 1/2/13), and Petitioner Gabriel’s letter dated October 22, 2012 (submitted with her Hearing Request dated October 20, 2012), are admitted into evidence, together with the testimony of Petitioner Gabriel.
4. USDA Rural Development’s Exhibits RX 1 through RX 10, plus Narrative, Witness & Exhibit List (filed December 13, 2012), are admitted into evidence, together with the

testimony of Giovanna Leopardi.

5. The first issue is whether Petitioner Gabriel owes to USDA Rural Development a balance of **\$37,473.15** (as of December 12, 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 March 27, 2007, for a home in Texas.

6. The loan was made by Home Federal Savings and Loan, which, within the two weeks after the loan was made, sold the loan to JP Morgan Chase Bank, N.A. RX 2, p. 4. JP Morgan Chase Bank, N.A. (the Holding Lender) is the parent company of Chase Home Finance LLC (the Servicing Lender). RX 6, p. 4. Frequently I refer to these entities as Chase, or the lender. The balance of the loan is now unsecured (“the debt”). RX 2. Petitioner Gabriel borrowed \$75,990.00. RX 2.

7. Petitioner Gabriel’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 Gabriel signed (RX 1, p. 2), and is recited in the following paragraph, paragraph 8.

8. The *Guarantee* establishes an **independent** obligation of Petitioner Gabriel, “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 **\$37,473.15** on November 10, 2011. RX 6, p. 10; RX 7. This, the amount USDA Rural Development paid, is the amount USDA Rural Development seeks to recover from Petitioner Gabriel under the *Guarantee*.

10. Potential Treasury collection fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$37,473.15** would increase the current balance by \$10,492.48, to \$47,965.63. *See* RX 10, p. 2.

11. Petitioner Gabriel’s Hearing Request states, “Home was illegally foreclosed on!! I dispute this debt.” Petitioner Gabriel’s letter includes, among other things:

Every year from 2007 when I bought the house I was told they underestimated my taxes and my payments kept increasing. I tried to modify my loan and work with Chase to be able to keep my home, but they were

unwilling to work with me.

12. Foreclosure was initiated on September 13, 2010. RX 6, p. 5. At the foreclosure sale on October 5, 2010, the lender Chase was the highest bidder, at \$51,000.00, so the home sold to the lender Chase. RX 3. Chase sold the REO (real estate owned) on January 5, 2011 (that was the closing date), for \$50,000.00.

13. Getting the security (the home) resold was an expensive process. First, all the costs of foreclosure were incurred, and Petitioner Gabriel 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 Gabriel 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. The details of the \$90,703.64 that had come due are summarized on RX 7. The \$50,000.00 from sale of the home reduced the balance, and so did \$3,230.49 in additional credits. RX 7.

14. Interest alone from June 1, 2009 (the Due Date of the Last Payment Made) until January 5, 2011 (the closing date of the sale of the REO), was \$6,347.31. No additional interest has accrued since January 5, 2011. No additional interest will accrue, which makes repaying the debt more manageable.

15. After USDA Rural Development paid Chase **\$37,473.15** (RX 7), USDA Rural Development contacted Petitioner Gabriel by letter dated June 9, 2012, which, among other things, asked Petitioner Gabriel to pay \$37,473.15 within 60 days. Petitioner Gabriel wrote in her letter dated October 22, 2012 and also testified, that she had not understood that the Department of Agriculture had anything to do with the loan; she had understood only that it was a First time Buyer's Program.

16. Does Petitioner Gabriel owe to USDA Rural Development a balance of **\$37,473.15** (as of December 12, 2012) in repayment of a United States Department of Agriculture / Rural Development / Rural Housing Service *Guarantee* (see RX 1, esp. p. 2)? After careful review of the evidence, I conclude that she does. The *Guarantee* is the document by which Petitioner Gabriel promised to reimburse USDA Rural Development if it ("the Agency") paid a loss claim to Chase. USDA Rural Development did pay a loss claim on the requested loan to the lender: USDA Rural Development reimbursed the lender Chase **\$37,473.15** on November 10, 2011. RX 6, p. 10; RX 7.

17. The second issue is whether Petitioner Gabriel shall have another opportunity to negotiate with USDA Rural Development (the "debt settlement" process). When Petitioner Gabriel received the USDA Rural Development letter dated June 9, 2012 (RX 8), she 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 the shock. Petitioner

Gabriel has 3 young children to support and care for, and she works full-time. She has had an ongoing struggle to recover from Chase.

Findings, Analysis and Conclusions

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

19. Petitioner Gabriel owes the debt described in paragraphs 5 through 16.

20. **No refund** to Petitioner Gabriel of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.

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

22. Petitioner Gabriel 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.

Order

23. Until the debt is repaid, Petitioner Gabriel 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).

24. 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 Gabriel the opportunity to negotiate a repayment plan with USDA Rural Development. USDA Rural Development will begin the process by sending a letter to Petitioner Gabriel.

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

26. If NO agreed repayment plan between Petitioner Gabriel 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 Gabriel 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).

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

28. The Garnishment Proceeding and this case are DISMISSED, without prejudice to Petitioner Gabriel 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 7th day of February 2013

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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