

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AWG]
) Docket No. **13-0131**
Zackery S. Brockbank, n/k/a)
)
Zackery S. Hill,)
)
Petitioner) **Decision and Order**

Appearances:

Zackery S. Hill, formerly known as Zackery S. Brockbank, the Petitioner, representing himself (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 February 7, 2013. Zackery S. Hill, formerly known as Zackery S. Brockbank, the Petitioner (“Petitioner Hill”) participated, representing himself (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 Hill’s Hearing Request dated November 29, 2012, timely FAXed on December 3, 2012 is admitted into evidence, together with the testimony of Petitioner Hill.
4. USDA Rural Development’s Exhibits RX 1 through RX 7, plus Narrative, Witness & Exhibit List, filed on December 19, 2012, are admitted into evidence, together with the testimony of Michelle Tanner.

5. As of November 8, 2012, Petitioner Hill owed to USDA Rural Development a balance of **\$3,719.11** in repayment of the United States Department of Agriculture / Rural Housing Service loan dated in 2005 (and disbursed in increments), for a home in Utah. The loan balance (“the debt”) is now unsecured.

6. Garnishment has apparently begun, so the balance Petitioner Hill owes to USDA Rural Development is repeatedly being reduced. As will be seen later in this Decision, the amounts garnished from Petitioner Zackery Hill’s pay must be returned to him, so the balance may go back to **\$3,719.11**.

7. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$3,719.11** would increase the current balance by \$1,041.35, to \$4,760.46. *See* RX 7.

8. The amount Petitioner Hill borrowed beginning in 2005 was \$143,000.00. RX 1. When the home was sold in a short sale on April 24, 2012, the debt was \$140,834.84:

\$138,392.55	Principal Balance
\$ 1,777.83	Interest Balance
\$ 474.00	Recoverable costs (such as unpaid taxes, insurance, foreclosure costs)
\$ 3.77	Interest on recoverable costs
<u>\$ 186.69</u>	Late Charges
\$140,834.84	Total Amount Due
<u>=====</u>	

RX 6, and the testimony of Michelle Tanner.

9. Proceeds from sale of the home reduced the Total Amount Due by \$136,045.81. RX 6. The Escrow Balance reduced the Total Amount Due by another \$1,069.92. RX 6. The debt was thereby reduced to **\$3,719.11** unpaid (as of November 8, 2012) (excluding the potential remaining collection fees). *See* RX 6, RX 7, and the testimony of Michelle Tanner.

10. Interest stopped accruing, either as of the date of the sale, or when the sale proceeds were applied on the loan in about May 2012. No additional interest will accrue, which makes repaying the debt more manageable.

11. Through *offsets* of income tax refunds, Petitioner Hill and his co-borrower pay a smaller amount toward collection fees than they will if they make payments (a \$17.00 flat fee for the cost of collection through *offset*, compared to as much as 28% for the cost of collection for other payments), so I encourage Petitioner Hill and his co-borrower to allow

offsets of income tax refunds to repay the debt. Petitioner Hill and his co-borrower paid a substantial portion of the debt through last year's income tax refunds, which were applied to reduce the loan in March 2012; prior to the short sale proceeds being applied to reduce the loan in about May 2012. Petitioner Hill's income tax refund was \$1,515.00 (*see* RX 4, p. 23); and her income tax refund was \$6,407.00 (*see* RX 4, p. 20).

12. Petitioner Hill may have recourse against his co-borrower, his former wife, for sums he is required to pay that are her responsibility (and vice versa). Nevertheless, the debt remains his and his co-borrower's joint-and-several obligation. Petitioner Hill still owes the balance of **\$3,719.11** unpaid (as of November 8, 2012, excluding the potential remaining collection fees), and USDA Rural Development may collect that amount from him. Or, USDA Rural Development may collect that amount from her; or some from each of them. [Her case is also pending here in the USDA Office of Administrative Law Judges, Docket No. 13-0074.]

13. Garnishment of Petitioner Zackery Hill's pay should **not** have already begun, because his Hearing Request was **not** "Late." The "Notice of Intent to Initiate Administrative Wage Garnishment Proceedings," dated November 12, 2012, gave Petitioner Hill the following deadline to request a hearing:

REQUEST A HEARING. You may request a hearing from the Federal Agency by completing and mailing the enclosed Request for Hearing to the address listed below (U.S. Department of the Treasury, in Birmingham, Alabama). If we receive your written request for a hearing on or before **December 3, 2012** (emphasis added), Treasury will not issue a wage garnishment order on behalf of the Federal Agency until your hearing is held and a decision is reached.

It appears to me that Petitioner Hill's Hearing Request dated November 29, 2012 was FAXed on December 3, 2012, and was consequently **not** Late, even if Treasury had expected it to arrive by mail in a post office box in Birmingham, Alabama. Consequently, the amounts garnished from Petitioner Zackery Hill's pay will have to be returned to him.

Discussion

14. Garnishment of Petitioner Hill's disposable pay is **not** authorized through March 2014. Beginning April 2014, garnishment is authorized. Petitioner Hill, if you wish to contact Treasury's collection agency to negotiate a compromise of the debt, you may telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Hill, you may want to request **apportionment of debt between you and the co-borrower**. Petitioner Hill, 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 Hill, 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 Hill, you may wish to include someone else with you in the telephone call when you call.

Findings, Analysis and Conclusions

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

16. Petitioner Hill owes the debt described in paragraphs 5 through 12.

17. Garnishment of Petitioner Hill's disposable pay is **not** authorized through March 2014. Beginning April 2014, **garnishment up to 15% of Petitioner Hill's disposable pay** is authorized. 31 C.F.R. § 285.11.

18. Any amounts collected through garnishment of Petitioner Hill's pay prior to implementation of this Decision **shall be returned to Petitioner Hill**. [The balance can be expected to increase when amounts taken from Petitioner Hill's pay are returned to him.]

19. Repayment of the debt may occur through *offset* of Petitioner Hill's **income tax refunds** or other **Federal monies** payable to the order of Mr. Hill.

Order

20. Until the debt is repaid, Petitioner Hill shall give notice to USDA Rural Development or those collecting on its behalf, of any changes in his mailing address; delivery address for commercial carriers such as FedEx or UPS; FAX number(s); phone number(s); or e-mail address(es).

21. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment through March 2014. Beginning April 2014, **garnishment up to 15%** Petitioner Hill's disposable pay is authorized. 31 C.F.R. § 285.11.

22. Any amounts already collected prior to implementation of this Decision through garnishment of Petitioner Hill's pay **shall be returned** to Petitioner Hill.

Copies of this Decision 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

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