

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: )  
)  
Chelsea Barton, ) [AWG]  
) Docket No. **13-0096**  
f/k/a Chelsea Howell, )  
) **Remand to USDA Rural Development and**  
Petitioner ) **Dismissal of Garnishment Proceeding and This Case**

Appearances:

Chelsea Barton, formerly known as Chelsea Howell, Petitioner, representing herself (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. A hearing by telephone was held on February 5, 2013. Petitioner Chelsea Barton (Petitioner Barton) 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, represented by Michelle Tanner.

Summary of the Facts Presented

3. Petitioner Barton’s Hearing Request dated November 2, 2012, with accompanying letter, is admitted into evidence, together with the testimony of Petitioner Barton.
4. USDA Rural Development’s Exhibits RX 1 through RX 11, plus Narrative, Witness & Exhibit List, were filed on December 14, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner.

5. USDA Rural Development's position is that Petitioner Barton owes to USDA Rural Development **\$54,713.38** (as of December 6, 2012), 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 CCSF, LLC dba Greystone Financial Group on September 18, 2008. RX 2, pp. 1-3. Petitioner Barton borrowed, with her then-husband Roger Howell, \$104,081.00.

6. CCSF, LLC dba Greystone Financial Group immediately sold the loan to JP Morgan Chase Bank, N.A. RX 2, p. 4. 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.

7. Petitioner Barton borrowed the \$104,081.00, with her then-husband, to buy a home in Utah; the balance of the loan is now unsecured ("the debt"). Petitioner Barton'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 Barton signed, and is recited in the following paragraph, paragraph 8.

8. The *Guarantee* establishes an **independent** obligation of Petitioner Barton, "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 did pay a loss claim on the requested loan to the lender, **\$54,713.38** on June 21, 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 Barton under the *Guarantee*. See RX 10, especially p. 1.

10. Potential Treasury collection fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$54,713.38** would increase the current balance by \$15,319.75, to \$70,033.07. See RX 10, p. 2.

11. Petitioner Barton's position is that her former husband (and co-borrower) Roger Howell was awarded the home and ordered to pay the debt, 100%, in the divorce, on March 4, 2009. Petitioner Barton testified that Roger Howell is the one to whom USDA Rural Development should look for repayment.

12. Petitioner Barton may have recourse against her co-borrower, her former husband, for any amounts she is required to pay that are his responsibility. Nevertheless, the debt remains her and her co-borrower's joint-and-several obligation, and the court orders in the divorce do not prevent USDA Rural Development from collecting from either or both of them. Petitioner Barton still owes the balance of **\$54,713.38** (as of December 6, 2012, excluding the potential remaining collection fees), and USDA Rural Development could legally collect the entire amount from her; or, USDA Rural Development could legally collect the entire amount from Roger Howell; or some from each of them.

13. The Due Date of the Last Payment Made was July 1, 2009. RX 6, p. 5. Foreclosure was initiated on December 17, 2009. RX 6, p. 5. At the Foreclosure Sale on May 14, 2010, the lender was not outbid, so the home sold to the lender, Chase, for \$63,750.00. Chase then marketed the REO (real estate owned) but failed to sell it within the 6 months allowed. The debt had added up to \$123,060.15 by March 18, 2011. See RX 7 for the summary of principal, interest, costs and fees, including the lender expenses to sell the property.

14. What is the significance of March 18, 2011? That is the date of the liquidation appraisal. A liquidation appraisal valued the home at \$65,000.00 as of March 18, 2011. RX 5, p. 7. Consequently the Howells were credited with \$65,000.00 for the value of the house to reduce the debt.

15. Here, the liquidation appraisal provided protection to the Howells. The Howells were protected by the \$65,000.00 liquidation appraisal value, even though the house, when it sold later, brought only \$23,100.00. USDA Rural Development Narrative. Chase tried to sell the house for more. The original list price was \$87,900.00. RX 4, p. 9. The list price was reduced, down to \$75,600.00. RX 5, p. 10.

16. Getting the security (the home) resold was an expensive process. First, all the costs of foreclosure were incurred, and Petitioner Barton is expected to reimburse for those costs; because no one outbid the lender at the foreclosure sale, costs incurred to sell the REO were then incurred, and Petitioner Barton is expected to reimburse for those costs as well, through the date of the liquidation appraisal on March 18, 2011. RX 7 shows that the lender expenses to try to sell the property were \$10,113.50. Meanwhile, interest continued to accrue, taxes continued to become due, and insurance premiums continued to be paid. Interest alone from July 1, 2009 (the Due Date of the Last Payment Made) until March 18, 2011, was \$9,127.66. RX 7.

17. Petitioner Barton's co-borrower Roger Howell filed for bankruptcy in 2010, in a case that was dismissed on August 25, 2011.

18. No additional interest has accrued since March 18, 2011 (the date of the liquidation appraisal) and none will accrue, which makes repaying the debt more manageable.

19. Does Petitioner Barton owe to USDA Rural Development a balance of **\$54,713.38** (as of December 6, 2012, excluding the potential remaining collection fees), 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 Barton 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 **\$54,713.38** on June 21, 2011. RX 6, p. 11; RX 7. [Although I agree with Petitioner Barton that this was her former husband’s doing; and she could not have prevented it; I still find her legally liable to repay USDA Rural Development.]

20. The debt (**\$54,713.38**) was sent to Treasury for collection on August 10, 2012, and there had been no collections from Treasury as of December 6, 2012. Thus **\$54,713.38** remained unpaid as of December 6, 2012 (excluding the potential remaining collection fees). See RX 10, especially pp. 1-2.

21. After USDA Rural Development paid Chase the loss claim, **\$54,713.38**, USDA Rural Development tried to contact Petitioner Barton by letter in January 2012. Petitioner Barton testified persuasively that she never lived in the town where her January 2012 letter was sent. Of the addresses Experian provided to USDA Rural Development (RX 9, p. 7), Petitioner Barton testified that she either (a) never lived there or (b) had moved from there long before the January 2012 letter. RX 9, pp. 4-6. The specific address on Petitioner Barton’s letter is the same as on the letter for Roger Howell (RX 9, pp. 1-3), from whom she had been divorced nearly 3 years.

22. Petitioner Barton shall have another opportunity to negotiate with USDA Rural Development (the “debt settlement” process).

#### Findings, Analysis and Conclusions

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

24. Petitioner Barton owes the debt described in paragraphs 5 through 21.

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

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

27. Petitioner Barton 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

28. Until the debt is repaid, Petitioner Barton 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).

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

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

31. If NO agreed repayment plan between Petitioner Barton 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 Barton 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).

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

33. The Garnishment Proceeding and this case are DISMISSED, without prejudice to Petitioner Barton 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 11<sup>th</sup> day of February 2013

s/ Jill S. Clifton

Jill S. Clifton  
Administrative Law Judge

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