

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AWG]
) Docket No. **13-0094**
 Roy J. Dawson III)
) **Remand to USDA Rural Development and**
 Petitioner) **Dismissal of Garnishment Proceeding and This Case**

Appearances:

Roy J. Dawson III, representing himself (appearing *pro se*), the Petitioner; 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 5 and 20, 2013. Dr. Roy J. Dawson III, the Petitioner (“Petitioner Dawson III”) 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 Dawson III’s Exhibits PX 1 through PX 9 (including “Consumer Debtor Financial Statement” and pay stub) filed on January 30 and February 4, 2013; plus Petitioner Dawson III’s Hearing Request dated in November 2012 with accompanying document (USDA letter dated December 6, 2000, over the signature of Darlene A. Shannon, Community Development Manager); are admitted into evidence, together with the testimony of Petitioner Dawson III.
4. USDA Rural Development’s Exhibits RX 1 through RX 6, plus Narrative, Witness & Exhibit List, filed on December 31, 2012, are admitted into evidence, together with the testimony of Michelle Tanner.

5. Petitioner Dawson III asks that the debt be dismissed, especially since he “was never offered the opportunity to pay off the debt or compromise a payment resolution.” Petitioner Dawson III cites the USDA letter dated December 6, 2000, over the signature of Darlene A. Shannon, Community Development Manager, included in his Hearing Request. Petitioner Dawson III claims that since he did not have the debt settlement opportunity specified in that USDA letter, he owes nothing to USDA Rural Development.

6. I disagree with Petitioner Dawson III’s theory of the case and find to the contrary that as of December 6, 2012, Petitioner Dawson III owed to USDA Rural Development a balance of **\$23,369.58** in repayment of the United States Department of Agriculture / Farmers Home Administration loan made in 1984, for a home in New Jersey. *See* USDA Rural Development Exhibits RX 1 through RX 6, plus Narrative, Witness & Exhibit List, esp. RX 1 and RX 6.

7. The loan balance (“the debt”) is unsecured; the home was sold about 12 years ago. Garnishment of Petitioner Dawson III’s pay has been ongoing since about March 2012 (RX 6, p. 1), and garnishment of his former wife’s pay (the co-borrower) has been ongoing even longer (RX 6, p. 3, regarding Pamela G. Allen). Thus the balance Petitioner Dawson III owes to USDA Rural Development is repeatedly being reduced.

8. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$23,369.58** would increase the December 6th balance by \$6,543.48, to \$29,913.06. *See* RX 6, p. 2.

9. The amount that Petitioner Dawson III and his former wife (then Pamela G. Dawson) borrowed in 1984 was \$41,000.00. RX 1. Payments were not kept current, and the loan was accelerated for foreclosure on October 14, 1999. RX 2. The Notice of Acceleration (and of Intent to Foreclose) showed \$55,299.75 unpaid principal and \$2,188.36 unpaid interest as of October 14, 1999. RX 2. This did not include other costs, such as unpaid insurance and unpaid real estate taxes that had to be advanced by USDA Rural Development.

10. A foreclosure sale was not held, because a short sale (for \$35,500.00, *see* RX 5, p. 1) was successfully completed in late December 2000 or early January 2001. The sale proceeds from the short sale (\$22,455.93) were forwarded from the field office on about January 6, 2001, and were applied to reduce the loan on about January 10, 2001. RX 3, pp. 19, 21.

11. For there to have been \$14,000.00 **more** principal due in 1999 (RX 2) than was borrowed in 1984, the loan had been seriously delinquent. Amounts not paid when due had been added to principal. Such a remedy keeps the borrower in the home. One such remedy is called reamortization. Reamortization makes the loan current by adding the delinquent

amount to the principal balance. Reamortization does not change the total amount owed, which all becomes principal.

12. Petitioner Dawson III testified that his former wife had been awarded the home in their divorce. Petitioner Dawson III testified that with very little notice, he, Petitioner Dawson III, was asked to come to the closing in which the home was being sold in the short sale.

13. Before the short sale proceeds were applied to reduce the debt, the debt amount was \$65,439.39. RX 4.

\$ 55,299.75	unpaid principal
\$ 9,281.16	unpaid interest (to about January 10, 2001)
<u>\$ 858.48</u>	unpaid recoverable costs, fees (such as foreclosure costs, insurance, taxes)
\$ 65,439.39	debt before short sale proceeds applied
<u>=====</u>	

RX 4, and the testimony of Michelle Tanner.

14. Interest stopped accruing when sale proceeds were applied on the loan, in January 2001. Proceeds from sale of the home reduced the debt by \$22,455.93. The escrow balance (\$738.53) was also applied to reduce the debt.

\$ 65,439.39	debt before short sale proceeds applied
- \$ 22,455.93	proceeds from sale of the home
- <u>\$ 738.53</u>	escrow balance
\$ 42,244.93	debt after short sale proceeds and escrow balance applied
<u>=====</u>	

15. An additional fee billed after foreclosure (\$499.44) was added to the debt.

\$ 42,244.93	debt after short sale proceeds and escrow balance applied
+ <u>\$ 499.44</u>	fee billed after foreclosure
\$ 42,744.37	debt to be collected
<u>=====</u>	

16. Thus the debt still to be paid, was greater than Petitioner Dawson III and his former wife had borrowed in the first place. As between Petitioner Dawson III and his then-wife and co-borrower, the former Pamela G. Dawson, there may be recourse for one against the other, depending on whether their divorce orders specified who would pay this debt or whether other legal principles apply to determine which of them is responsible for what portion of this debt. If either of them is required to pay sums that are the responsibility of the other, the one who pays may be entitled to reimbursement from the other. Either way, USDA Rural Development is not hindered from collecting in full from either of them. The debt remains Petitioner Dawson III's and his co-borrower's joint-and-several obligation.

17. Both Petitioner Dawson III and his former wife, Pamela G. Allen, have paid considerable amounts to reduce the debt. *See* RX 4. Collections, first at USDA and then from Treasury, have reduced the debt to **\$23,369.58** unpaid as of December 6, 2012 (excluding the potential remaining collection fees). *See* RX 4, RX 6, and the testimony of Michelle Tanner. USDA Rural Development may collect that amount from Petitioner Dawson III. Or, USDA Rural Development may collect that amount from Pamela G. Allen; or some from each of them.

18. Debt settlement opportunities were extended to both Petitioner Dawson III and his former wife, Pamela G. Allen. Petitioner Dawson III testified that the "88 Claire Court" address being used by USDA was correct; Dr. Dawson testified that he moved out of 88 Claire Court in about August 2002. USDA's outreaches for debt settlement occurred throughout 2001 and into January 2002. RX 3, pp. 22-24. USDA's attempts to debt settle with Petitioner Dawson III are documented, for example, at RX 3, p. 22. Petitioner Dawson III told USDA by phone on February 15, 2001 that he would complete and return the debt settlement application. RX 3, p. 22. Nevertheless, Petitioner Dawson III did not submit the debt settlement application or required financial documentation as to him. Pamela G. Allen did submit the debt settlement application and required financial documentation as to her, but she made the mistake of offering zero. Again, she was encouraged to make an offer (RX 3, p. 23) but did not. RX 5, p. 14.

Findings, Analysis and Conclusions

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

20. Petitioner Dawson III owes the debt described in paragraphs 6 through 17.

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

22. Repayment of the debt may also occur through *offset* of Petitioner Dawson III's **income tax refunds** or other **Federal monies** payable to the order of Dr. Dawson III.

23. Petitioner Dawson III 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 the "debt settlement" process with Petitioner Dawson III.

Order

24. Until the debt is repaid, Petitioner Dawson III 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).

25. 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 Dawson III the opportunity to negotiate a repayment plan with USDA Rural Development. USDA Rural Development will begin the process by sending a letter to Petitioner Dawson III.

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

27. If NO agreed repayment plan between Petitioner Dawson III 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 Dawson III 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 he can withstand garnishment without it causing financial hardship).

28. Repayment of the debt may continue to occur through *offset* of Petitioner Dawson III's **income tax refunds** or other **Federal monies** payable to the order of Dr. Dawson III.

29. The Garnishment Proceeding and this case are DISMISSED, without prejudice to Petitioner Dawson III 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 21st day of February 2013

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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