

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AWG]
) Docket No. **13-0073**
James P. Sanchez)
) **Remand to USDA Rural Development and**
Petitioner) **Dismissal of Garnishment Proceeding and This Case**

Appearances:

James P. Sanchez, the Petitioner, who represents himself (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 3 and February 27, 2013. James P. Sanchez, the Petitioner (“Petitioner Sanchez”), participated, representing himself (appearing *pro se*).
2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”). USDA Rural Development participated, represented by Giovanna Leopardi.

Summary of the Facts Presented

3. Petitioner Sanchez’s letter (date stamped October 15, 2012) is admitted into evidence, together with his Hearing Request (dated October 10, 2012). Petitioner Sanchez’s Consumer Debtor Financial Statement and accompanying documents, which had not yet been received by the Hearing Clerk at the time of the hearing, will be admitted into evidence when received by the Hearing Clerk.
4. Petitioner Sanchez’s Hearing Request was regarded as a “Late Hearing” request - - the request was supposed to be received by October 10, 2012 to keep garnishment from

happening until he had had the opportunity to be heard. From the date stamp, it appears that Petitioner Sanchez's Hearing Request was not received until October 15, 2012.

5. USDA Rural Development's Exhibits RX 1 through RX 5, plus Narrative, Witness & Exhibit List (filed December 13, 2012), are admitted into evidence, together with the testimony of Giovanna Leopardi.

6. The loan was made by the United States Department of Agriculture, Farmers Home Administration, in 1994, for a home in Louisiana. RX 1. Petitioner Sanchez, on March 23, 1994, signed the Promissory Note and the Mortgage for the home. RX 1. The amount Petitioner Sanchez borrowed was \$51,000.00.

7. The loan became delinquent was accelerated for foreclosure due to "MONETARY DEFAULT". RX 2. The Notice of Acceleration (and of Intent to Foreclose) shows \$47,133.23 unpaid principal and \$1,149.92 unpaid interest (as of March 5, 2002). RX 2, p. 1. This would not include other costs, such as unpaid insurance and unpaid real estate taxes that may have had to be advanced by USDA Rural Development.

8. Petitioner Sanchez testified regarding his liver transplant. He would have been in Portland, Oregon following the liver transplant at the time the Notice of Acceleration was sent. Petitioner Sanchez testified that he had been told to go to Portland, Oregon on November 30, 2001 to be available for the transplant. Petitioner Sanchez testified that he was in the hospital for 4 months; and that he remained in the Portland area until about May 23, 2002, when he went to Michigan to stay with family. The address USDA Rural Development was using for him during that time is apparently an address where he was having his mail sent while he was out-of-state for the liver transplant. Petitioner Sanchez testified that he never lived at that address.

9. A foreclosure sale was not held, because a short sale was completed on September 3, 2002, for \$16,400.00. RX 3, pp. 21, 19.

10. Before the amount recovered from the sale was applied to reduce the debt, the debt amount was \$51,118.86. RX 4.

\$ 47,079.74	unpaid principal
\$ 2,674.52	unpaid interest
<u>\$ 1,364.60</u>	fees/costs (includes unpaid taxes, unpaid insurance, and other costs)
\$ 51,118.86	debt before short sale proceeds applied
<u>=====</u>	

RX 4 and Giovanna Leopardi's testimony.

11. After the \$16,400.00 sale proceeds were applied, the remaining debt was \$34,718.86. RX 4. An additional cost of \$240.00 was added to the debt (RX 4). A refund on legal fees, \$1,015.00, was subtracted from the debt (RX 4). The balance was then **\$33,943.86**. RX 4.

12. No interest has accrued since the short sale in September 2002. No additional interest will accrue, which makes repaying the debt more manageable.

13. The balance, **\$33,943.86**, was referred to U.S. Treasury for collection in April 2003. RX 3, p. 31. That remained the balance, through December 11, 2012. RX 5, p. 2. Petitioner Sanchez still (as of December 11, 2012) owes the balance of **\$33,943.86** (excluding potential collection fees), and USDA Rural Development may collect that amount from him.

14. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$33,943.86**, would increase the balance by \$9,504.28, to \$43,448.14. [My calculation is different from that shown on RX 5, p. 2.]

15. Petitioner Sanchez's debt settlement opportunity came in about mid-February 2003. RX 3, p. 29. At that time, Petitioner Sanchez was back in the home, leasing for \$400.00 per month the home that had been sold in the short sale on September 3, 2002. Petitioner Sanchez had moved back into the home on about August 1, 2002 (about a month before the short sale). Petitioner Sanchez testified that August 1, 2002 was when he could go back home to go back to work, following 8 months being out-of-state for his liver transplant.

16. When Petitioner Sanchez returned to the home on August 1, 2002, he apparently did not update USDA Rural Development with his current address. From his testimony, it is not clear to me whether he received the correspondence from USDA Rural Development that would have given him the opportunity to negotiate with USDA Rural Development ("debt settlement"). In light of the liver transplant, Petitioner Sanchez should have another opportunity for "debt settlement" with USDA Rural Development. Petitioner Sanchez may also want to consult with an attorney who has bankruptcy expertise.

Findings, Analysis and Conclusions

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

18. Petitioner Sanchez owes the debt described in paragraphs 6 through 14.

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

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

21. Petitioner Sanchez 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 Sanchez.

Order

22. Until the debt is repaid, Petitioner Sanchez 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).

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

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

25. If NO agreed repayment plan between Petitioner Sanchez 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 Sanchez 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).

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

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

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Giovanna Leopardi, Appeals Coordinator
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Enclosed to only Petitioner Sanchez:

2 blank Consumer Debtor Financial Statement forms

(in case he finds the form useful to include in his
debt settlement application paperwork)

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