

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Maria Juarez,)	Docket No. 13-0072
)	
Petitioner)	Decision and Order

Appearances:

Maria Juarez, representing herself (appearing pro se), the Petitioner; 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, January 23, and February 12, 2013. Maria Juarez, full name Maria Lisa Juarez, the Petitioner (Petitioner Juarez), 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 Giovanna Leopardi.

Summary of the Facts Presented

3. Petitioner Juarez’s Hearing Request dated October 15, 2012, plus attachments including list of 6 *offsets*, are admitted into evidence, together with the testimony of Petitioner Juarez.
4. USDA Rural Development’s Exhibits RX 1 through RX 11, plus the 3 documents that accompanied the Exhibits entitled Narrative, Witness & Exhibit List (filed December 26, 2012, January 22, 2013, and March 20, 2013), are admitted into evidence, together with the testimony of Giovanna Leopardi.

5. The amount Petitioner Juarez borrowed from USDA Rural Housing Service (a part of USDA Rural Development) in July 1998 was \$71,275.00. RX 1, RX 6, p. 1. Petitioner Juarez borrowed to buy a home in Texas. The balance is now unsecured (“the debt”).
6. USDA Rural Development’s position is that Petitioner Juarez owed to USDA Rural Development **\$66,423.75** (as of December 10, 2012), in repayment of the United States Department of Agriculture / Rural Development / Rural Housing Service loan. RX 5, pp. 1-2. The amount was \$71,758.92 (RX 3, p. 52; RX 4; and RX 7), and payments have reduced it. The \$71,758.92 was referred to U.S. Treasury for collection in May 2012. RX 5, especially p. 1. Collections from Treasury (from Petitioner Juarez, through *offset* and garnishment), left **\$66,423.75** unpaid as of December 10, 2012 (excluding the potential remaining collection fees). RX 5, especially p. 2.
7. Petitioner Juarez’s position is that she owes nothing to USDA Rural Development because the house was sold for \$58,479.00, and her income tax refunds were applied to reduce the debt. Petitioner Juarez expected that she would owe **nothing** if she were properly credited with her income tax refunds that had been intercepted (\$16,859.00 *offset*) and with the \$58,479.00 sale proceeds. *See* Petitioner Juarez’s Hearing Request plus attachments. Another income tax refund was intercepted and applied in May 2012. *See* RX 5, p. 1. Garnishment of Petitioner Juarez’s wages began in about October 2012.
8. What Petitioner Juarez overlooks is the massive accumulation of interest, property taxes, and insurance premiums that she did not pay during her Chapter 13 bankruptcy proceeding. Ms. Leopardi testified that the Chapter 13 bankruptcy was filed on July 3, 2003, and discharged on November 12, 2008 [in the U.S. Bankruptcy Court, Northern District of Texas (Dallas), Petition #: 03-36775]. Ultimately, Petitioner Juarez lost the home to foreclosure; the sale was August 2, 2011. The foreclosure costs and costs to resell the “REO” (real estate owned) were also significant in consuming the value from Petitioner Juarez’s income tax refunds and the home.
9. Petitioner Juarez was credited with the bid amount at the foreclosure sale (\$49,555.51). USDA Rural Development was not outbid; the home became a “REO”. The \$49,555.51 credit did not stretch far enough to pay any of the principal balance owed. The \$49,555.51 credit did not stretch far enough to pay even all the accrued interest. More was owed than the principal and the accrued interest: through the more-than-5 years that the Chapter 13 bankruptcy case was pending, ongoing loan requirements were **not** being paid current: interest that went unpaid continued to accrue, property taxes continued to come due that USDA Rural Development paid, and insurance premiums continued to come due that USDA Rural Development paid. If Petitioner Juarez complied with her bankruptcy plan, she would have paid only the arrearage owed to USDA Rural Development at the time she filed. Payments that came to USDA Rural Development through the bankruptcy did not pay

the ongoing monthly payments. Petitioner Juarez was expected to pay the current payments on her own.

10. In December 1998 the loan payments were current and the principal balance was \$71,078.19. RX 6, p. 1. Petitioner Juarez's payments, plus subsidy, are shown in the payment history. RX 6, pp. 1-4.

11. By December 1999 delinquency was noted and also Petitioner Juarez's phone call regarding an accident and the need to rent cars which had put her behind. The principal balance was \$70,510.52. RX 6, p. 4.

12. In 2000 delinquency persisted and Petitioner Juarez communicated regarding payments she would send and that she had not been receiving child support, since April. RX 6, p. 8. When an income tax refund was intercepted in March 2001 (\$3,365.25, after the collection fee had been subtracted), it wasn't enough to stop the foreclosure - - it wasn't enough to bring the account current. RX 6, pp. 10-11. Petitioner Juarez then sent more than a thousand dollars in April 2001 (western union) and more than a thousand dollars in May 2001 (western union), so that her account was paid current (through the June 28, 2001 due date). RX 6, p. 13.

13. Delinquency recurred, and Petitioner Juarez communicated that she was in-between jobs. By December 2001 the account was accelerated due to Monetary Default, and foreclosure was approved. RX 6, p. 14. By mid-January 2002, the account was again paid current (through the December 28, 2001 due date). RX 6, p. 16. The principal balance was \$69,007.30.

14. Delinquency recurred, and Petitioner Juarez communicated about car repairs. RX 6, p. 18. During the summer of 2002, Petitioner Juarez was notified that the subsidy would expire on August 27, 2002. RX 6, p. 19. By January 2003, the account was accelerated due to Monetary Default and foreclosure was approved. RX 6, p. 21. Petitioner Juarez's Chapter 13 bankruptcy filing during the summer of 2003 "voided" (Ms. Leopardi's term) the acceleration. *See* RX 6, p. 22; USDA Rural Development Narrative filed March 20, 2013, p. 2. An income tax refund intercepted in March 2003 (\$1,333.80, after the collection fee had been subtracted) reduced the principal balance to \$67,235.36 (RX 6, p. 21), and an income tax refund intercepted in July 2003 (\$1,586.80, after the collection fee had been subtracted) was applied to the pre-bankruptcy filing arrearage (RX 6, p. 25), reducing the principal balance to \$66, 873.77 as of the end of 2003. RX 6, pp. 26-27.

15. As of December 1, 2004, the principal balance was \$66,577.10. RX 6, p. 29. The account was seriously delinquent; and interest, property taxes, and insurance premiums continued to come due and not be paid by Petitioner Juarez.

16. As of December 28, 2005, the principal balance was \$66,350.19. RX 6, p. 33. The account remained seriously delinquent; and interest, property taxes, and insurance premiums continued to come due and not be paid by Petitioner Juarez.

17. As of December 8, 2006, the principal balance remained \$66,350.19. RX 6, p. 34. The account remained seriously delinquent; and interest, property taxes, and insurance premiums continued to come due and not be paid by Petitioner Juarez.

18. As of December 12, 2007, the principal balance remained \$66,350.19. RX 6, p. 36. The account remained seriously delinquent; and interest, property taxes, and insurance premiums continued to come due and not be paid by Petitioner Juarez.

19. During 2008, USDA Rural Development added a \$1,071.15 escrow fee and following an audit, increased the principal balance to \$67,570.29, after having reversed and reapplied some curtailments/payments. An entry states in part: "acct delinquency due to non payment of post petition payments by borrower during life of the bankruptcy" (entry dated September 16, 2008). As of December 9, 2008, the principal balance was \$67,570.29. RX 6, p. 41; RX 9, p. 1. The account remained seriously delinquent; and interest, property taxes, and insurance premiums continued to come due and not be paid by Petitioner Juarez.

20. As of December 14, 2009, the principal balance was \$66,748.98. RX 9, p. 2. *See also* RX 6, p. 29. The account was seriously delinquent; and interest, property taxes, and insurance premiums continued to come due and not be paid by Petitioner Juarez.

21. As of December 22, 2010, the principal balance was \$63,676.98. RX 9, p. 3. *See also* RX 6, p. 51.

22. The foreclosure sale was held on August 2, 2011. USDA Rural Development was the highest bidder, at \$49,555.51. The principal balance (acquisition balance) was \$63,676.98. RX 2, p. 7.

23. Here is the amount USDA Rural Development shows as due before the \$49,555.51 foreclosure sale bid is credited (RX 7):

\$ 63,676.98	unpaid principal
\$ 7,806.94	uncollected interest
\$ 25,306.66	recoverable cost
\$ 24,129.21	administrative adjustment to principal (interest, <i>see</i> paragraph 25)
<u>\$ 119.64</u>	interest on fees

\$121,039.43 loan balance, before credited with foreclosure bid

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24. What USDA Rural Development expects Petitioner Juarez to pay is summarized on RX 7 (minus the amounts already collected at U.S. Treasury). The \$49,555.51 foreclosure sale bid was credited against the 3 categories at the bottom, as follows:

\$ 25,306.66	recoverable cost
\$ 24,129.21	administrative adjustment to principal (interest, <i>see</i> paragraph 25)
\$ <u>119.64</u>	interest on fees
\$ 49,555.51	
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25. The Notice of Acceleration and of Intent to Foreclose stated that \$24,476.32 of unpaid interest was due as of May 6, 2009. RX 2, pp. 2-4. The “next due” date was March 28, 2004 (RX 2, p. 5); that is, the loan was more than 5 years past due when it was accelerated for foreclosure. Interest continued to accrue for an additional 2 years plus, through the date of the foreclosure sale August 2, 2011. The \$24,129.21 entry that was made on October 3, 2011 that USDA Rural Development termed “administrative adjustment to principal” (*see* RX 8, p. 4) is that portion of accrued interest that was covered (as if “paid”), by the \$49,555.51 foreclosure bid credit. There still remained \$7,806.94 interest that was not covered by the \$49,555.51 foreclosure bid credit (called “uncollected interest”, *see* paragraph 22). RX 8, p. 4. No additional interest has accrued since August 2011 and none will accrue, which makes repaying the debt more manageable.

26. The loan history includes an addition of “fees of \$25,306.66” charged by USDA Rural Development. The USDA Rural Development Narrative filed March 20, 2012 explains the \$25,306.66:

After a thorough review of the case and the assistance obtained from a Financial Specialist, the Agency of Rural Development has determined that the fees of \$25,306.66 is the total amount of all the costs involved with the Foreclosure/Acquisition. These fees include the costs related to the foreclosure process itself, fees billed for the escrow and the amount of Unauthorized Assistance found in 2004, just to name a few.

27. The \$25,306.66 is categorized as “recoverable cost”. *See* RX 4, p. 15. I find USDA Rural Development’s explanation to be true and find that the amount is what would be expected after the more-than-5-years that the Chapter 13 bankruptcy case was pending, when ongoing loan requirements were **not** being paid current. The property taxes and insurance premiums that USDA Rural Development paid on Petitioner Juarez’s behalf are a substantial portion of this \$25,306.66. The detail is shown in RX 8. When the loan was accelerated for foreclosure, and the “next due” date was March 28, 2004, the fees due were already \$18,101.62 (RX 2, p. 5), and that did not include the fees for the additional 2 years

plus, through the date of the foreclosure sale August 2, 2011. The costs of foreclosing were also significant. The Unauthorized Assistance was only \$2,778.48 of this \$25,306.66. RX 4, p. 17.

28. When the foreclosure bid of \$49,555.51 is subtracted from the \$121,039.43 loan balance, a \$71,483.92 balance remains. RX 7. When \$275.00 is then added, a \$71,758.92 balance remains. RX 7. This amount the same as was earlier calculated. See RX 4, p. 1, which shows the \$71,758.92 that was “debt settled” in 2012. See Debt Settlement Action Memo dated February 2, 2012. RX 4, p. 18. Both RX 7 and RX 4 show \$63,676.98 principal still owed after credit for the foreclosure bid reduced the debt; both show \$7,806.94 added to that; and both show \$275.00 added to that. This amount, \$71,758.92, is what USDA Rural Development referred to the U.S. Treasury Department for collection in May 2012. RX 5, p. 1.

29. The balance remaining as of December 10, 2012, was **\$66,423.75**, because of reductions to the balance from an *offset* and garnishments processed at U.S. Treasury. RX 5, p. 1. USDA Rural Development may collect this amount (as of December 10, 2012) from Petitioner Juarez. RX 5. This balance excludes potential collection fees. RX 5, p. 2.

30. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$66,423.75**, would increase the balance by \$18,598.64, to \$85,022.39. RX 5, p. 2.

31. When Petitioner Juarez did not respond to the opportunity for “debt settlement” with USDA Rural Development and the debt was referred to Treasury, potential collection costs were added to what Petitioner Juarez would have to pay. For example, in order for Treasury to collect enough to forward **\$66,423.75** to USDA Rural Development, it could cost Petitioner Juarez as much as \$85,022.39. Treasury would identify the balance as \$85,022.39, because, except for *offsets*, as much as \$1.28 may be required for every \$1.00 that will go to USDA Rural Development.

Discussion

32. Petitioner Juarez, you may choose to telephone Treasury’s collection agency to **negotiate** the repayment of the remaining debt. Petitioner Juarez, this will require **you** to telephone Treasury’s collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Juarez, 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 Juarez, 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 Juarez, you may wish to include someone else with you in the telephone call if you call to negotiate.

Findings, Analysis and Conclusions

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

34. Petitioner Juarez owes the debt described in paragraphs 5 through 29.

35. There is no evidence that garnishment up to 15% of disposable pay will cause financial hardship. **Garnishment is authorized, up to 15%** of Petitioner Juarez's disposable pay. 31 C.F.R. § 285.11.

36. I am **not** ordering any amounts already collected prior to implementation of this Decision, whether through *offset* or garnishment of Petitioner Juarez's pay, to be returned to Petitioner Juarez.

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

Order

38. Until the debt is repaid, Petitioner Juarez 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).

39. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment **up to 15%** of Petitioner Juarez's disposable pay. 31 C.F.R. § 285.11.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 22nd day of March 2013

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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