

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Archie M. Lewis)	Docket No. 11-0445
)	
Petitioner)	Decision and Order

1. The hearing by telephone was held on November 8, 2011. Mr. Archie M. Lewis, the Petitioner (“Petitioner Lewis”), 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”) and was represented by Mary E. Kimball. The address for USDA Rural Development for this case is

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Summary of the Facts Presented

3. USDA Rural Development’s Additional Narrative and Exhibits (filed November 17, 2011), plus Exhibits, Narrative, Witness & Exhibit List (filed October 13, 2011), are admitted into evidence, together with the testimony of Mary Kimball.

4. Petitioner Lewis’s Employment form (Form I-9) with Omni, plus the Steel Dynamics letter documenting his involuntary termination (filed November 9, 2011), plus his Consumer Debtor Financial Statement (filed October 24, 2011), are admitted into evidence, together

with the testimony of Petitioner Lewis, together with his Hearing Request dated September 15, 2011, including his Financial Statement of Debtor.

5. Petitioner Lewis owes to USDA Rural Development **\$20,978.63** (as of November 16, 2011) in repayment of a loan made in 1988 by the United States Department of Agriculture Farmers Home Administration (now USDA Rural Development, Rural Housing Service). Petitioner Lewis borrowed to buy a home in Texas. The **\$20,978.63** balance is now unsecured (“the debt”). [Garnishment is ongoing; the balance is being reduced two or three times each month.] See USDA Rural Development Exhibits, esp. RX 10, RX 11, RX 6, RX 7.

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$20,978.63** would increase the November 16, 2011 balance by \$5,874.02, to \$26,852.65. See USDA Rural Development Exhibits, esp. RX 11.

7. The loan Petitioner Lewis borrowed, with his then-wife the co-borrower, Donna, in 1988 from USDA Farmers Home Administration was \$30,000.00. RX 1. Petitioner Lewis testified that he and the co-borrower divorced in 1989; that he remarried his first wife (Mary). The loan was reamortized in 1991 and again in 1997. Both times the amount delinquent on the account was added to principal, making the account current. In 1991 the principal amount became \$38,707.02 (RX 1, p. 3). In 1997 the principal amount became \$50,578.63 (Narrative). The reamortizations did not change the amount owed. The payments were again not kept current. By the time of the foreclosure sale in 1999, the debt had grown to \$60,303.51:

\$ 50,532.54	Principal Balance prior to foreclosure sale
\$ 8,548.98	Unpaid Interest prior to foreclosure sale
<u>\$ 1,221.99</u>	Fee Balance prior to foreclosure sale (<i>ie</i> , real estate taxes and insurance)
\$ 60,303.51	Total Amount Due
- \$ 29,500.00	Proceeds from foreclosure sale
- <u>\$ 186.27</u>	Unapplied funds
\$ 30,617.24	Unpaid in 1999
<u>=====</u>	

RX 6.

So the foreclosure sale left \$30,617.24 unpaid in 1999.

8. Since the foreclosure sale, no additional interest has accrued, and numerous *offsets* during 2001 through 2009, likely Federal income tax refunds, have reduced the balance, as have the garnishments that began in 2011. The *offsets* and garnishments applied to the debt (through November 16, 2011) leave **\$20,978.63** unpaid (excluding the potential remaining collection fees). See RX 10, RX 11, RX 6 and RX 7. Garnishment is ongoing, so this balance is being reduced a few times each month.

9. Petitioner Lewis testified that he has been unable to meet his family responsibilities during about 9 months of 15% garnishments. His four children are all grown, yet Petitioner Lewis helps them financially, as they have special needs, including the needs of Petitioner Lewis's 12 grandchildren and 3 great grandchildren. Petitioner Lewis's current gross pay is [REDACTED] per hour; more than [REDACTED] per month gross. His current disposable pay per month is [REDACTED] or more. [Disposable pay (within the meaning of 31 C.F.R. § 285.11) is gross pay minus income tax, Social Security, Medicare, and health insurance withholding; and in certain situations minus other employee benefits contributions that are required to be withheld.]

10. In addition to *offsets*, garnishment up to 15% of Petitioner Lewis's disposable pay can occur unless he cannot withstand garnishment in that amount without hardship. 31 C.F.R. § 285.11. Although garnishment at 15% of Petitioner Lewis's disposable pay yields roughly [REDACTED] per month or more in repayment of the debt, he cannot withstand garnishment in that amount without financial hardship.

11. Petitioner Lewis's current reasonable and necessary living expenses, for himself and his family, now consume his entire take-home pay. Petitioner Lewis testified that his wife's osteoarthritis prevents her from working. Petitioner Lewis's wife has no obligation to pay this debt. In addition to this debt, Petitioner Lewis has a few other, relatively small debts. One of his sons is on disability from cancer. Petitioner Lewis has health problems of his own. As he shows on his Consumer Debtor Financial Statement, he is 55 and has had 5 heart attacks and a stroke during the last 6 years. His most recent heart attack was in June 2011 (during garnishment).

12. Petitioner Lewis is responsible and has made progress repaying the USDA Rural Development debt, but paying 15% of his disposable pay has created hardship. Consequently, to prevent hardship, garnishment shall be limited to **5%** of Petitioner Lewis's disposable pay through **November 2013**; then, beginning **December 2013**, garnishment **up to 10%** of Petitioner Lewis's disposable pay is authorized. 31 C.F.R. § 285.11.

13. Petitioner Lewis testified that he had not been employed for a year when the garnishments began, and that he had been fired from his previous job (for misloading trucks, miscalculating the loads - - he testified that he was not very good with the computer). He said that for making 4 loading mistakes in 3 years, he was fired. His documentation filed

November 9, 2011, shows that he was terminated involuntarily from Steel Dynamics on September 16, 2010; he was hired by Omni on or about November 8, 2010. The garnishments from Petitioner Lewis's pay that began in February 2011 **through the first year of his working for Omni** (he was hired by Omni on or about November 8, 2010) will all have to be **refunded to Petitioner Lewis**. [The garnishments AFTER his first year of working for Omni through the implementation of this Decision will NOT have to be refunded to Petitioner Lewis, even though they were taken at 15%.] The refund to Petitioner Lewis will of course increase the balance owed.

14. Petitioner Lewis, you may want to negotiate the disposition of the debt with Treasury's collection agency. *See* paragraph 15.

Discussion

15. Garnishment shall be limited to **5%** of Petitioner Lewis's disposable pay through **November 2013** (*see* paragraph 12). Petitioner Lewis, you may want to **negotiate** the disposition of the debt. Petitioner Lewis, this will require **you** to telephone Treasury's collection agency. The toll-free number for you to call is **1-888-826-3127**. You may choose to offer to compromise the debt for an amount you are able to pay, to settle the claim for less. You may choose to ask that **the debt be apportioned between you and your co-borrower**. 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. You may wish to include someone else with you in the telephone call when you call to negotiate.

Findings, Analysis and Conclusions

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

17. Petitioner Lewis owes the debt described in paragraphs 5 through 8.

18. Garnishment is authorized, but to prevent financial hardship shall be limited to **5%** of Petitioner Lewis's disposable pay through **November 2013**; then, beginning **December 2013**, garnishment **up to 10%** of Petitioner Lewis's disposable pay is authorized. 31 C.F.R. § 285.11.

19. Any amounts collected through garnishment of Petitioner Lewis's pay prior to his having been in his current job for at least 12 months **shall be returned to Petitioner Lewis**. [He was involuntarily separated from his previous job; *see* paragraph 13.] I am NOT, however, requiring any amounts garnished AFTER Petitioner Lewis had been in his current

job for at least 12 months, through the implementation of this Decision, to be returned to him, even though the garnishments were at 15%.

20. This Decision does not prevent repayment of the debt through *offset* of Petitioner Lewis's **income tax refunds** or other **Federal monies** payable to the order of Mr. Lewis.

Order

21. Until the debt is repaid, Petitioner Lewis 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).

22. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment limited to **5%** of Petitioner Lewis's disposable pay through **November 2013**; then, beginning in December 2013, garnishment **up to 10%** of Petitioner Lewis's disposable pay is authorized. 31 C.F.R. § 285.11.

23. USDA Rural Development, and those collecting on its behalf, will be required to **return to Petitioner Lewis** any amounts already collected through garnishment of Petitioner Lewis's pay prior to his having been in his current job for at least 12 months .

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

Done at Washington, D.C.
this 17th day of November 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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