

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Norma A. Saucedo,)	Docket No. 12-0122
)	
Petitioner)	Decision and Order

Appearances:

Ugochi Anaebere, Esq., and William E. Keitel, Esq., both of Inland Counties Legal Services, Indio, California, for the Petitioner Norma A. Saucedo; 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), lasting nearly three hours, was held on March 19, 2012. Ms. Norma A. Saucedo, full name Norma Alicia Saucedo (“Petitioner Saucedo”) is represented by Ugochi Anaebere, Esq., and William E. Keitel, Esq., both of Inland Counties Legal Services, Indio, California.
2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”). USDA Rural Development is represented by Michelle Tanner.
3. Post-Hearing, USDA Rural Development filed additional exhibits, to which Petitioner Saucedo replied with a Brief and accompanying exhibits.

Summary of the Facts Presented

4. Petitioner Saucedo’s documents filed on February 28, 2012 are admitted into evidence, together with the testimony of Petitioner Saucedo. The documents filed on February 28 include Petitioner’s Narrative and Memorandum of Law, Petitioner’s “Consumer Debtor Financial Statement” and Petitioner’s Declaration; and Petitioner’s Exhibits PX 1 through PX 20. PX 1 through PX 20 include, among other things, loan

documents from 2007 (including Petitioner's "paystub" from Wal-Mart showing Petitioner's earnings and deductions for a 2-week pay period at the end of August 2007 and Petitioner's 2006 Income Tax Return and W-2 forms); foreclosure documents from 2009; Petitioner's "paystubs" for August through December 2011 from Wal-Mart showing Petitioner's earnings and deductions; documentation of Petitioner's receipt of child support payments April 2010 through November 2011; and a copy of Petitioner's Hearing Request (which was filed on December 20, 2011). Also admitted into evidence are Petitioner's Brief and accompanying exhibits PX 21 through PX 23, filed April 20, 2012. [Petitioner's counsel did an exceptionally good job presenting evidence and addressing facts and raising legal issues, which I would appreciate under any circumstances and especially appreciate here, where English is not Petitioner's first language.]

5. USDA Rural Development's Exhibits RX 1 through RX 11, plus Narrative, Witness & Exhibit List, were filed on January 30, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner. Also admitted into evidence are RX 12 through RX 15, filed April 3, 2012.

6. The first issue is whether Petitioner Saucedo owes to USDA Rural Development a balance of **\$136,137.68** (as of January 21, 2012) in repayment of a United States Department of Agriculture / Rural Housing Service *Guarantee* (see RX 1, esp. p. 2) for a loan made on November 1, 2007 by JP Morgan Chase Bank, N.A., for a home in California, the balance of which is now unsecured ("the debt").¹ See USDA Rural Development Exhibits, esp. RX 1 and RX 2; see also RX 11, p. 2. [Garnishment began in October 2011 (RX 11, p. 1). Garnishment is authorized because Petitioner Saucedo's Hearing Request was LATE; her request needed to be received by August 24, 2011. See Notice dated August 3, 2011. If garnishment has been ongoing since January 21, 2012, the balance may have been further reduced by the time I sign this Decision.]

7. Petitioner Saucedo signed the *Guarantee* on September 18, 2007. If Petitioner Saucedo did not understand the *Guarantee*, which is in English, and Petitioner Saucedo speaks Spanish, I do not fault USDA Rural Development, which had no presence. If there is any fault, it may lie with Petitioner Saucedo's bilingual real estate agent, Arturo Duran, and the "two ladies that were lenders". The date of Petitioner Saucedo's signature (on the second page of the *Guarantee*) is consistent with the first page of the *Guarantee* (RX 1, p. 1), which shows an interest rate locked in until 10/26/07. The loan made on November 1, 2007 indeed shows the interest rate to be 6.75% per annum (RX 2, p. 1); the loan terms are the same as the terms shown on the first page of the *Guarantee*. What troubled me during the Hearing is that the signature of the "Lender's Authorized Representative" is dated more than two months later, three weeks *after* the loan had already been made. It is not clear

¹ Rural Housing Service is a part of USDA Rural Development.

from the *Guarantee* what lender the Lender's Authorized Representative represents, since *no information was provided* on the *Guarantee* form to identify the lender. RX 1, p. 1. RX 15, p. 3.

8. USDA Rural Development readily identified the lender, even though the lender was not clearly identified on the *Guarantee* form, as is evidenced by USDA Rural Development's Conditional Commitment to JP Morgan Chase Bank, NA, issued on October 4, 2007. RX 15, p. 3. *See also* RX 15, p. 4; and RX 15, pp. 5-6. USDA Rural Development's completed commitment to JP Morgan Chase Bank, NA, is found in the Loan Note Guarantee, issued November 30, 2007. RX 1, pp. 3-4.

9. Petitioner Saucedo'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 Saucedo signed, and is recited in the following paragraph, paragraph 10. USDA Rural Development paid JP Morgan Chase Bank, N.A., \$136,750.68 on or about April 23, 2010. RX 8, p. 10; PX 13, p. 1. This, the amount USDA Rural Development paid, is the amount USDA Rural Development seeks to recover from Petitioner Saucedo under the *Guarantee* (less the amounts already collected from Petitioner Saucedo, through garnishment, *see* RX 11, esp. p. 1). Petitioner Saucedo testified that in about October 2008, she knew she could not pay; she could not afford the payments; her boyfriend went back to Mexico, and she decided to leave the house, because she could not pay anymore.

10. The *Guarantee* establishes an **independent** obligation of Petitioner Saucedo, "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.

11. Potential Treasury collection fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$136,137.68** would increase the current balance by \$38,118.55, to \$174,256.23. *See* USDA Rural Development Exhibits, esp. RX 11, p. 2.

12. The amount Petitioner Saucedo borrowed from JP Morgan Chase Bank, N.A., was \$184,000.00 on November 1, 2007. RX 2, pp. 1-3. The Due Date of the Last Payment Made was October 1, 2008. RX 8, p. 3. Petitioner Saucedo testified that she left the home when her boyfriend went back to Mexico, because she would no longer have his contribution toward the payments. Petitioner Saucedo testified that she did not know USDA

was involved with her loan. Petitioner Saucedo testified that she didn't know what would happen if she did not pay. Petitioner Saucedo testified that she did not know whether she gave the lender (Chase) a new address, a forwarding address (she moved to Coachella). PX 22, p. 5. She testified she did not remember. When asked if she left the keys in the home, Petitioner Saucedo testified that she did not remember. When asked whether she attempted to contact the Agency (USDA Rural Development) at the office near where she lives now, Petitioner Saucedo testified that she did not. Petitioner Saucedo testified that she took the 1099A to the people from the income tax, and that they told her she might need to take it to the IRS.

13. Foreclosure was initiated on about May 18, 2009. RX 8, p. 4. At the Foreclosure Sale on September 8, 2009, the lender was not outbid, so the home sold, to the lender, for \$46,750.00 (RX 8, p. 4), for 1/4 the value from 2 years earlier. The lender then sold the REO (real estate owned). RX 8, p. 4. Two appraisals in October 2009 helped establish the acceptable listing price: (a) the BPO (Broker Price Opinion) "As Is" value of \$40,000.00; and (b) the "As Is" Appraised Value of \$68,500.00. RX 8, p. 4. The home was listed, originally for \$60,000.00; then, after a month, for \$57,000.00. The home (REO) sold for \$60,000.00 on January 27, 2010. RX 8, p. 5.

14. Getting the security (the home) resold was an expensive process, First, all the costs of foreclosure were incurred, and Petitioner Saucedo is expected to reimburse for those costs; because no one outbid the lender at the foreclosure sale, all the costs to sell the REO were then incurred, and Petitioner Saucedo is expected to reimburse for those costs as well. Meanwhile, interest continued to accrue, taxes continued to become due, and insurance premiums continued to be paid. Interest alone from October 1, 2008 (the Due Date of the Last Payment Made) until January 27, 2010 (when the REO was sold for \$60,000.00), was \$17,747.60. RX 8, p. 11.

15. The amount Petitioner Saucedo borrowed in 2007 was \$184,000.00. RX 2. By the time the home was sold for \$60,000.00 on January 27, 2010, the debt had grown to \$211,498.42. RX 8, p. 11.

\$182,207.54	Unpaid Principal Balance
\$ 17,747.60	Unpaid Interest (from 10/01/08 until 01/27/10)
\$ 1,965.26	Protective Advance to pay real estate taxes and insurance
\$ 40.96	Interest on Protective Advance
<u>\$201,961.36</u>	
+ <u>9,537.06</u>	Lender Expenses to Sell Property (<i>see</i> RX 8, p. 11 for detail)
<u>\$211,498.42</u>	Total Amount Due

RX 8, p. 11.

Interest stopped accruing when the proceeds of sale (\$60,000.00) were applied to the debt. Recoveries, credits and reductions (\$14,747.74) were also applied to the debt, leaving \$136,750.68 as the amount USDA Rural Development paid JP Morgan Chase Bank, N.A., on or about April 23, 2010. RX 8, p. 10; PX 13, p. 1. Collections from Treasury since then (from Petitioner Saucedo, through garnishment), leave **\$136,137.68** unpaid as of January 21, 2012 (excluding the potential remaining collection fees). *See* RX 11 and USDA Rural Development Narrative, plus Michelle Tanner's testimony.

16. Does Petitioner Saucedo owe to USDA Rural Development a balance of **\$136,137.68** (as of January 21, 2012) in repayment of a United States Department of Agriculture / Rural Housing Service *Guarantee* (*see* RX 1, esp. p. 2)? I conclude that she does. Petitioner Saucedo challenges the authority of USDA to collect here under the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (DCIA) (31 U.S.C. § 3701 *et seq.*). First, under 31 U.S.C. § 3701(b), I find that Petitioner Saucedo does owe the balance of **\$136,137.68** (as of January 21, 2012) to the United States, on account of a loan guaranteed by the Government. Next, I find that the regulations that apply here are 7 C.F.R. Part 3 (Debt Management), particularly 7 C.F.R. § 3.53, especially 7 C.F.R. § 3.53(d) and (e). I conclude further that even if Petitioner Saucedo had been protected from personal deficiency being entered against her in favor of JP Morgan Chase Bank, N.A., under California law, USDA Rural Development may still collect from her administratively, pursuant to the *Guarantee*. This is in part because of the independent nature of the *Guarantee*; and in part because administrative collections such as this do not require a valid judgment to support garnishment or *offset*. An agency of the United States government collecting administratively has rules that differ from those of the various jurisdictions in which the loans were made. Additionally, but not essential here, I take official notice that JP Morgan Chase Bank, N.A. (the Holding Lender) is the parent company of Chase Home Finance LLC (the Servicing Lender). RX 8, p. 3.

17. The second issue is whether Petitioner Saucedo can withstand garnishment without it causing financial hardship. Garnishment began in October 2011 (RX 11, p. 1). When Petitioner Saucedo borrowed from JP Morgan Chase Bank, N.A., Petitioner Saucedo worked full-time (40 hours per week) for Wal-Mart. Petitioner Saucedo testified that the change in her number of hours happened because of her right shoulder: she could no longer pull pallets. Wal-Mart was able to put her in a different job but for only 30 hours per week, not 40. Petitioner Saucedo's Consumer Debtor Financial Statement (filed February 28, 2012), pay stubs, and testimony provide the evidence necessary for me to evaluate the factors to be considered under 31 C.F.R. § 285.11. Petitioner Saucedo works about 30 hours per week for Wal-Mart, making [REDACTED] per hour. In 2011, Petitioner Saucedo's disposable pay (within the meaning of 31 C.F.R. § 285.11) averaged roughly [REDACTED] per month;

currently, her disposable pay is roughly [REDACTED] to [REDACTED] per month. PX 7. [Disposable income 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.] 31 C.F.R. § 285.11.

18. Petitioner Saucedo supports not only herself, but also her youngest of her four children, an 11-year old. Garnishment at 15% of Petitioner Saucedo's disposable pay has caused Petitioner Saucedo financial hardship. The reasonable and necessary living expenses for Petitioner Saucedo and her daughter are about [REDACTED] to [REDACTED] 0 per month. Petitioner Saucedo's former husband pays child support for the 11-year old, averaging [REDACTED] per month. The child support does not always arrive every month and sometimes her former husband catches up later, because his work as a truck driver is varies. I find that Petitioner Saucedo's earnings, plus the child support, permit her to pay, after meeting her needs and those of her dependent child, garnishment of **no more than 5%** of her disposable pay. Consequently, to prevent further hardship, potential garnishment to repay "the debt" (see paragraph 6) shall be limited to **no more than 5%** of Petitioner Saucedo's disposable pay. 31 C.F.R. § 285.11. This would remain my conclusion even if Petitioner Saucedo were working 40 hours per week or more.

19. Petitioner Saucedo is responsible and able to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

20. Petitioner Saucedo, you may want to appeal my Decision in U.S. District Court.

21. Petitioner Saucedo, I know it would be crushing if you determined to pay back the entire debt. PX 22, p. 2. Petitioner Saucedo, you may want to consult an attorney who has bankruptcy law expertise. You have brought to my attention that you cannot afford the legal fees, which must be prepaid, to pursue bankruptcy. I understand.

22. Petitioner Saucedo, from my review of the appraisals and other documentation of record, including the documentation of your income in qualifying you for the loan, I do not detect fraud on the part of the lender. Petitioner Saucedo, if you disagree, you may want to consider whether an action under 31 U.S.C. § 3729 is supportable. The sale of your home at foreclosure when no one outbid the lender, for \$46,750.00 (RX 8, p. 4) (that foreclosure sale price being about 1/4 the value of your purchase price 2 years earlier, paragraph 12); and resale of the REO for \$60,000.00 (paragraph 12), are startling, but I do not have reason to invalidate your obligation under the *Guarantee*.

23. Garnishment of Petitioner Saucedo's disposable pay is authorized in limited amount, **up to 5%** of Petitioner Saucedo's disposable pay. See paragraphs 17 & 18. Petitioner

Saucedo, you may want to telephone Treasury's collection agency to **negotiate** repayment of the debt, after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Saucedo, 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 Saucedo, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

25. Petitioner Saucedo owes the debt described in paragraphs 6 through 16.

26. To prevent further financial hardship, garnishment **up to 5%** of Petitioner Saucedo's disposable pay is authorized. Petitioner Saucedo cannot withstand garnishment greater than 5% of her disposable pay without creating financial hardship. 31 C.F.R. § 285.11. This will remain true even if Petitioner Saucedo works 40 hours per week or more.

27. **No refund** to Petitioner Saucedo of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized. [This was a LATE Hearing Request.]

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

Order

29. Until the debt is repaid, Petitioner Saucedo 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).

30. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment **up to 5%** of Petitioner Saucedo's disposable pay. 31 C.F.R. § 285.11.

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

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

Done at Washington, D.C.
this 24th day of April 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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