

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Kimberly Ann Stewart,)	Docket No. 12-0345
)	
Petitioner)	Decision and Order

Appearances:

Kimberly Ann Stewart, the Petitioner, representing herself (appearing *pro se*); 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 June 26 and July 16, 2012. Kimberly Ann Stewart, the Petitioner, also known as Kimberly A. Stewart (“Petitioner Stewart”), participated, representing herself (appears *pro se*).

2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and is represented by Michelle Tanner.

Summary of the Facts Presented

3. USDA Rural Development’s Exhibits RX 1 through RX 11, plus Narrative, Witness & Exhibit List (filed on May 11, 2012), are admitted into evidence, together with the testimony of Michelle Tanner.

4. Petitioner Stewart’s completed “Consumer Debtor Financial Statement” (filed on July 10, 2012), is admitted into evidence, together with the testimony of Petitioner Stewart, together with her Hearing Request (dated March 1, 2012).

5. Petitioner Stewart owes to USDA Rural Development **\$26,834.77** (as of May 9, 2012), in repayment of a United States Department of Agriculture / Rural Development / Rural Housing Service *Guarantee* (see RX 1, esp. p. 2) for a loan made in 2008, the balance of which is now unsecured (“the debt”). Petitioner Stewart borrowed to buy a home in Illinois.

6. The *Guarantee* (RX 1) establishes an **independent** obligation of Petitioner Stewart, “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.

7. The Due Date of Last Payment Made was October 1, 2008. RX 6, p. 5. Foreclosure was initiated on July 20, 2009. RX 6, p. 5. The lender Chase (Chase Home Finance LLC) bid \$29,325.00 and acquired the home, which became REO (Real Estate Owned), at the Sheriff’s sale on March 2, 2010. RX 3, esp. p. 6. See also RX 6, p. 5. The lender Chase marketed the home but did not accomplish a sale within the prescribed period. A liquidation appraisal was done on September 21, 2010 (see RX 5, p. 2).¹

8. USDA Rural Development reimbursed the lender \$28,772.77 on April 28, 2011. RX 6, p. 10. The \$1,938.00 recovery from the sale after the liquidation appraisal, reduced the amount of USDA Rural Development’s payment to **\$26,834.77**, which is the amount USDA Rural Development seeks to recover from Petitioner Stewart under the *Guarantee*. RX 7. RX 7 details the loss claim paid under the *Guarantee*, showing how the debt became **\$26,834.77**.

\$ 41,187.03	Unpaid Principal Balance
\$ 5,635.68	Unpaid Interest Balance (10-01-08 to 09-21-10)
\$ 988.74	Protective Advance to Pay Taxes and Insurance
\$ <u>24.71</u>	Interest on Protective Advance
\$ 47,836.16	Due from Borrower BEFORE Lender Expenses Added
+ \$ <u>7,117.10</u>	Lender Expenses to Sell Property

¹ The liquidation value, used because the home did not sell within the prescribed period, was only \$23,000.00. RX 5, p. 2; RX 6, p. 1. Chase then sold the REO for \$25,900.00 after the liquidation appraisal, which resulted in \$1,938.00 credited to USDA Rural Development. RX 6, pp. 18-19.

\$ 54,953.26	Total Debt Charged to Petitioner Stewart
=====	
- \$ 26,180.49	Credits (includes liquidation value of \$23,000.00)
\$ 28,772.77	Loss Claim
=====	
- \$ 1,938.00	Recovery/REO Sale
\$ 26,834.77	
=====	

RX 7, USDA Rural Development Narrative, and testimony.

9. Interest stopped accruing on the date of the liquidation appraisal, which was September 21, 2010 (*see* RX 5, p. 2).

10. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$26,834.77**, would increase the balance by \$7,513.74, to \$34,348.51. *See* USDA Rural Development Exhibits, esp. RX 10, p. 2.

11. Petitioner Stewart works as a dispatcher in a new job that she began just last month. Petitioner Stewart is still recovering from setbacks in about 2008 when she lost the job she had had for 10 years, and her health problems began. Her blood pressure is high, and for health reasons she left the job she had immediately prior to the dispatcher job (a factory job manufacturing headlights). Now, her disposable pay (within the meaning of 31 C.F.R. § 285.11) is roughly \$850.00 every 2 weeks, roughly \$1,850.00 per month. [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.]

12. Garnishment at 15% of Petitioner Stewart's disposable pay could yield nearly \$280.00 per month to repay the USDA Rural Development debt; but garnishment in any amount now would clearly cause Petitioner Stewart financial hardship (within the meaning of 31 C.F.R. § 285.11). Petitioner Stewart's Consumer Debtor Financial Statement (filed July 10, 2012) shows that her living expenses are understated (she allowed no money for food or clothing or emergencies or recreation, for example). In addition to living expenses, Petitioner Stewart is completing the last payments on medical expenses; paying delinquent federal income taxes (about \$300.00); and making payments on several other liabilities, all of which may be paid in full by the first quarter of 2013.

13. To prevent hardship, potential garnishment to repay “the debt” (*see* paragraph 5) must be limited to **0%** of Petitioner Stewart’s disposable pay through July 2013; then **up to 7%** of Petitioner Stewart’s disposable pay beginning August 2013 through July 2014; then **up to 15%** of Petitioner Stewart’s disposable pay thereafter. 31 C.F.R. § 285.11.

14. Petitioner Stewart is responsible and able to negotiate the disposition of the debt with Treasury’s collection agency.

Discussion

15. Through July 2013, no garnishment is authorized. Beginning August 2013 through July 2014, garnishment up to 7% of Petitioner Stewart’s disposable pay is authorized; and thereafter, garnishment up to 15% of Petitioner Stewart’s disposable pay is authorized. *See* paragraphs 11, 12 and 13. I encourage **Petitioner Stewart and the collection agency to negotiate** the repayment of the debt. Petitioner Stewart, this will require **you** to telephone the collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Stewart, 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 Stewart, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

17. Petitioner Stewart owes the debt described in paragraphs 5 through 10.

18. **Garnishment is authorized**, as follows: through July 2013, **no** garnishment. Beginning August 2013 through July 2014, garnishment **up to 7%** of Petitioner Stewart’s disposable pay; and thereafter, garnishment **up to 15%** of Petitioner Stewart’s disposable pay. 31 C.F.R. § 285.11.

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

20. Repayment of the debt may occur through **offset** of Petitioner Stewart’s **income tax refunds** or other **Federal monies** payable to the order of Ms. Stewart (whether or not garnishment is authorized).

Order

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

22. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment through July 2013. Beginning August 2013 through July 2014, garnishment **up to 7%** of Petitioner Stewart's disposable pay is authorized; and garnishment **up to 15%** of Petitioner Stewart's disposable pay thereafter. 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 19th day of July 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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