

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AWG]
) Docket No. 12-0607
Dennis Davis)
)
) **Remand to USDA Rural Development and**
Petitioner) **Dismissal of Garnishment Proceeding and This Case**

Appearances:

Dennis Davis, the Petitioner, representing himself (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, lasting 2 hours, was held by telephone on October 23, 2012. Dennis Davis, the Petitioner (“Petitioner Davis”) 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 participated, represented by Michelle Tanner.

Summary of the Facts Presented

3. Petitioner Davis’s letter dated and notarized and FAXed on August 10, 2012 has been treated as a Hearing Request and is admitted into evidence, together with the accompanying documents. Also admitted into evidence are Petitioner Davis’s Consumer Debtor Financial Statement, Earnings Statements, and accompanying letter (dated October 10, 2012), together with the testimony of Petitioner Davis.
4. USDA Rural Development’s Exhibits RX 1 through RX 6, plus Narrative, Witness & Exhibit List, were filed on September 25, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner.

5. As of September 13, 2012, Petitioner Dennis Davis owed to USDA Rural Development a balance of **\$33,711.39** in repayment of a United States Department of Agriculture / Farmers Home Administration loan made in 1986 for a home in Mississippi, the balance of which is now unsecured (“the debt”). [Petitioner Davis’s co-borrower (his former wife, Sonia Davis) owed this, too.] *See* USDA Rural Development Exhibits RX 1 through RX 6, especially RX 6, plus Narrative, Witness & Exhibit List (filed September 25, 2012), which are admitted into evidence, together with the testimony of Michelle Tanner.

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$33,711.39** would increase the current balance by \$9,439.19, to \$43,150.58. *See* RX 6 plus USDA Rural Development Narrative.

7. The “Notice of Federal Agency’s Intent to Initiate Administrative Wage Garnishment Proceedings,” dated May 17, 2012, gave Petitioner Davis until June 8, 2012 to request a hearing:

REQUEST A HEARING. You may request a hearing from the Federal Agency by completing and mailing the enclosed **Request for Hearing** to the address listed below (Diversified Collection Services, Inc., in Pleasanton, California). If we receive your written request for a hearing on or before **June 8, 2012**, Treasury will not issue a wage garnishment order on behalf of the Federal Agency until your hearing is held and a decision is reached.

Petitioner Davis did not respond to the Notice of Federal Agency’s Intent, but his letter dated and notarized and FAXed on August 10, 2012 has been treated as a Hearing Request, although two months LATE. Garnishment began in about August 2012, because Petitioner Davis’s Hearing Request was LATE.

8. Petitioner Davis did a thorough job in preparing his letter and attaching (a) the Final Decree of Divorce entered **18 years earlier**, on August 12, 1994; and (b) the Warranty Deed that was signed by only his former wife Sonia Davis and not by him on December 14, 2011. The home was sold for \$14,300.00 by that Warranty Deed.

9. A foreclosure sale had been scheduled for about August 29, 2011, but on that day USDA Rural Development approved the \$14,300.00 sale (short sale) as a pre-foreclosure sale. RX 3, pp. 1, 33.

10. The amount of unpaid taxes and unpaid insurance and other unpaid costs due to USDA Rural Development from that short sale was \$9,071.91. RX 5. The amount of unpaid interest due to USDA Rural Development from that short sale was \$23,302.66, because interest accrued from June 16, 2004 (RX 3, p. 38) to August 29, 2011 (RX 5). [The original “paid to” date was March 2004; then, over roughly a 7-year period, another 3

payments were made.] USDA Rural Development WAIVED \$19,316.22 of the unpaid interest. RX 5. Petitioner Davis's former wife managed to stay so long in the home without making payments in large part because of her bankruptcy actions, which prevented USDA Rural Development from proceeding from about 2004 to about 2009.

11. Petitioner Davis considers the actions requiring him to repay the debt entirely unjust, and I see his point. Petitioner Davis testified that his former wife Sonia Davis is still living in the home after having gone years making no payments; and that it is not fair to expect him to pay for what she left unpaid - - his involvement with the home ended in 1994 with the Final Decree of Divorce having awarded his former wife "title and possession of the domicile." Petitioner Davis testified that he has not lived in the home since 1994; that he never received notice and had no knowledge of the delinquency that his former wife caused or of the foreclosure action. Petitioner Davis testified that his former wife's employer at the Day Care Center for 20 years, Barbara Crenshaw, bought the home for \$14,300.00, after saying that she would do anything to get Sonia Davis able to stay in the house.

12. Petitioner Davis has had no opportunity to negotiate a repayment plan with USDA Rural Development, called "debt settlement". Petitioner Davis's "debt settlement" opportunity with USDA Rural Development should and will be restored. I have determined to REMAND this case to USDA Rural Development to begin the "debt settlement" process with Petitioner Davis.

13. Petitioner Davis, you may also want to call Treasury's collection agency to provide contact information for your former wife Sonia Davis. The toll-free number for you to call is **1-888-826-3127**.

Findings, Analysis and Conclusions

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

15. When Petitioner Davis entered into the borrowing transaction in 1986 with his co-borrower, Sonia Davis, certain responsibilities were fixed, as to each of them. The debt is Petitioner Davis's and his co-borrower's joint-and-several obligation. The divorce decree did not change the fact that each of them is liable to USDA Rural Development.

16. Petitioner Davis remains legally liable to repay USDA Rural Development, although he may have recourse against his co-borrower, Sonia Davis, to be reimbursed for amounts he has paid on the debt. Petitioner Davis may want to consult with an attorney about that; he may want to pursue that.

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

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

19. Petitioner Davis shall have the opportunity to negotiate a repayment plan with USDA Rural Development. USDA Rural Development will begin the process by sending a letter to Petitioner Davis.

20. Please notice, Petitioner Davis, 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 Davis, as you complete the forms and provide the requested documentation, will need to determine what to offer: total amount, as well as installments. You should explain why you regard the debt to be entirely that of your former wife Sonia Davis, not yours. Petitioner Davis, 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.

21. After USDA Rural Development begins the "debt settlement" process, the debt shall NOT be submitted to the U.S. Treasury for Cross Servicing except under circumstances that would normally cause USDA Rural Development to do so.

22. If NO agreed repayment plan between Petitioner Davis 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 Davis will be entitled anew to have a hearing, such as is described in the "Important Notice Concerning Administrative Wage Garnishment" that accompanied the U.S. Treasury's "Notice of Federal Agency's Intent to Initiate Administrative Wage Garnishment Proceedings", dated May 17, 2012. ¹

¹ A new Hearing Request should reference Docket No. 12-0607, and mention that a Hearing was begun on October 23, 2012. If I am still available to hear the case, either side may rely on evidence already presented. If another judge or hearing official will hear the case in my place, the evidence will likely need to be presented again. The exhibits would be available in the Hearing Clerk's record file, but testimony was not recorded except in my notes.

Order

23. Until the debt is repaid, Petitioner Davis 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).

24. This case is REMANDED to USDA Rural Development, which shall recall the debt from Treasury and give Petitioner Davis the opportunity to negotiate a repayment plan with USDA Rural Development. Accordingly, the Garnishment Proceeding and this case are DISMISSED, without prejudice to Petitioner Davis 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 13th day of November 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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