

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AWG]
) Docket No. **13-0043**
Dustin Lagunas)
) **Remand to USDA Rural Development and**
Petitioner) **Dismissal of Garnishment Proceeding and This Case**

Appearances:

Dustin Lagunas (Petitioner Lagunas), representing himself (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. Dustin Lagunas, the Petitioner (Petitioner Lagunas), represents himself (appears *pro se*). Petitioner Lagunas participated in the Hearing by telephone, which was held on March 26, 2013.¹
2. Rural Development, an agency of the United States Department of Agriculture (USDA), the Respondent (“USDA Rural Development”), participated in the Hearing by telephone, represented by Giovanna Leopardi.

Summary of the Facts Presented

3. Admitted into evidence is Petitioner Lagunas’s Hearing Request dated October 12, 2012, together with the testimony of Petitioner Lagunas.

¹ The Hearing was repeatedly rescheduled to accommodate Petitioner Lagunas’s work (and had previously been scheduled for January 4, February 12 and March 7, 2013).

4. USDA Rural Development's Exhibits RX 1 through RX 10, plus Narrative, Witness & Exhibit List, were filed on November 29, 2012, and are admitted into evidence, together with the testimony of Giovanna Leopardi.

5. Petitioner Lagunas bought a home in Texas in 2007, borrowing \$66,776.00 to pay for it. The loan was made by NTFN, Inc., dba Premier Nationwide Lending. The loan was sold to JP Morgan Chase Bank, N.A., with the servicing lender being Chase Home Finance, LLC. RX 2; RX 3. Frequently I refer to the lender as "Chase".

6. USDA Rural Development's position is that Petitioner Lagunas owes to USDA Rural Development **\$16,629.01** (as of March 20, 2013), in repayment of the United States Department of Agriculture / Rural Development / Rural Housing Service *Guarantee* (see RX 1, esp. p. 2) for the loan made in 2007 ("the debt"). See USDA Rural Development's Exhibits RX 1 through RX 10, plus Narrative, especially RX 10, p. 2.

7. The *Guarantee* (RX 1) establishes an **independent** obligation of Petitioner Lagunas, "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.

8. USDA Rural Development paid a loss claim of \$30,118.71 to the lender Chase on January 27, 2010 (RX 6, p. 9). RX 7 details the loss claim paid. After careful review of all of the evidence, I agree with USDA Rural Development's position.

9. The Due Date of the last payment made was May 1, 2008. RX 6, p. 4. The foreclosure sale was on May 5, 2009. RX 3, p. 1; RX 6, p. 4. Chase Home Finance, LLC was the highest bidder, at \$45,475.00 (the only bid). RX 3, p. 1; RX 6, p. 4.

10. The lender Chase bought the home at the foreclosure sale for \$45,475.00 (the lender was not outbid); and thereafter, marketed the home. Chase sold the REO (real estate owned) for \$49,500.00. RX 5. The original list price was \$52,000.00 (RX 6, p. 5), and the final list price was \$49,500.00 (RX 6, p. 5). RX 7 accurately shows that even after the \$49,500.00 proceeds from the sale of the home were applied to reduce the debt, Petitioner Lagunas still owed \$30,118.71 under the *Guarantee*.

11. The REO was sold on November 12, 2009. RX 5. No interest has accrued since 2009. No additional interest will accrue, which makes repaying the debt more manageable.

12. The amount of interest that accrued between May 1, 2008 and November 2009 (sale of the REO), was \$6,163.20. RX 7. Petitioner Lagunas is responsible to repay that, as part of the loss claim. The amount of expenses incurred by the lender Chase to foreclose on, maintain, and market the home, was \$7,370.13. RX 7. Petitioner Lagunas is responsible to repay that, as part of the loss claim. The principal balance was \$66,370.73, and there were unpaid taxes and insurance. All told, the amount due was \$81,100.38. RX 7.

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13. The loss claim total, \$30,118.71, after credit was given for the sale proceeds and other credits (RX 7), was referred to U.S. Treasury for collection in July 2010. RX 9, p. 3. Numerous payments have been made to reduce the debt, through *offsets* of income tax refunds and through garnishments of Petitioner Lagunas's disposable pay. RX 10, pp. 1 and 3, and the testimony of Giovanna Leopardi. Petitioner Lagunas (as of March 20, 2013) still owed the balance of **\$16,629.01** (excluding potential collection fees), and USDA Rural Development may collect that amount from him under the *Guarantee* (RX 1).

14. Petitioner Lagunas testified about the financial adversity from the loss of his job and from his divorce, and how he had tried to keep the home. Petitioner Lagunas testified that even today he cannot afford having his wages garnished and his income tax refunds being intercepted. Petitioner Lagunas testified that he is paying child support and that he barely has money to live on.

15. Petitioner Lagunas's debt settlement opportunity came in about mid-February 2010. RX 9, p. 4. Petitioner Lagunas testified that he never saw a letter from USDA Rural Development. The co-borrower had notified USDA Rural Development of a new address in January 2010. RX 9, p. 5. The debt settlement paperwork was sent to that new address. Petitioner Lagunas testified that the new address was hers, not his, and she never alerted him - - he never knew about the debt settlement paperwork. Petitioner Lagunas testified persuasively that he knew nothing of USDA Rural Development - - he was unaware that he was connected to USDA Rural Development - - so he failed to notify USDA Rural Development of his address.

16. Under these circumstances Petitioner Lagunas should have another opportunity for "debt settlement" with USDA Rural Development. Petitioner Lagunas may also want to consult with an attorney who has bankruptcy expertise.

Findings, Analysis and Conclusions

17. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Lagunas and USDA Rural Development; and over the subject matter (administrative wage garnishment, which requires determining whether Petitioner Lagunas owes a valid debt to USDA Rural Development).

18. Petitioner Lagunas owes a valid debt to USDA Rural Development. USDA Rural Development paid a loss claim to the lender Chase, \$30,118.71 on January 27, 2010 (RX 6, p. 9). RX 7 details the loss claim. That amount, \$30,118.71, is what USDA Rural Development recovers under the **Guarantee**, minus payments already applied to reduce the debt, which leave a balance of **\$16,629.01** as of March 20, 2013. Petitioner Lagunas is obligated under the **Guarantee**. RX 1, RX 7; USDA Rural Development Narrative; and testimony.

19. USDA Rural Development may collect administratively pursuant to a **Guarantee**, even where NO judgment has been entered against a borrower and NO personal deficiency has been established. Petitioner Lagunas owes to USDA Rural Development **\$16,629.01** as of March 20, 2013 [plus potential Treasury collection fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%), which would increase the balance by \$4,656.12, to \$21,285.13.]

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

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

22. Petitioner Lagunas should have another "debt settlement" opportunity with USDA Rural Development; that opportunity should and will be restored. I have determined to REMAND this case to USDA Rural Development to begin the "debt settlement" process with Petitioner Lagunas.

Order

23. Until the debt is repaid, Petitioner Lagunas 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. USDA Rural Development will recall the debt from the U.S. Treasury for further servicing by USDA Rural Development. Thus, this case is REMANDED to USDA Rural Development to give Petitioner Lagunas the opportunity to negotiate a repayment plan with USDA Rural Development. USDA Rural Development will begin the process by sending a letter to Petitioner Lagunas.

25. Please notice, Petitioner Lagunas, 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 Lagunas, as you complete the forms and provide the requested documentation, will need to determine what to offer: total amount, as well as installments.

26. If NO agreed repayment plan between Petitioner Lagunas 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 Lagunas will be entitled anew to have a hearing (**not** on the issue of the validity of the debt, but only on the issue of whether he can withstand garnishment without it causing financial hardship).

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

28. The Garnishment Proceeding and this case are DISMISSED, without prejudice to Petitioner Lagunas 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 26th day of March 2013

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Enclosed to only Petitioner Lagunas:

2 blank Consumer Debtor Financial Statement forms
(in case he finds the form useful to include in his debt settlement application paperwork)

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