

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AWG]
) Docket No. **13-0104**
Antonio McCormick)
) **Remand to USDA Rural Development and**
Petitioner) **Dismissal of Garnishment Proceeding and This Case**

Appearances:

Antonio McCormick, the Petitioner, who represents himself (appears *pro se*); and

Michelle Tanner, Appeals Coordinator, United States Department of Agriculture, Rural Development, Centralized Servicing Center, St. Louis, Missouri, who represents the Respondent (USDA Rural Development).

1. The hearing by telephone was held on April 4, 2013. The Petitioner, Antonio McCormick (“Petitioner McCormick”), participated, representing himself (appearing *pro se*). Also participating on his behalf during the hearing was his wife Angela McCormick.

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

Summary of the Facts Presented

3. Petitioner McCormick’s Hearing Request dated November 23, 2012, submitted by both Petitioner McCormick and his wife Angela McCormick, is admitted into evidence, together with the testimony of Petitioner McCormick and his wife Angela McCormick.

4. USDA Rural Development’s Exhibits RX 1 through RX 13, plus Narrative, Witness & Exhibit List, were filed on December 20, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner; together with replacement exhibits that will be filed to update and correct RX exhibits such as RX 9 and RX 12.

5. Petitioner McCormick and his wife Angela McCormick bought a home in South Carolina in 2008, borrowing \$95,000.00 to pay for it. The loan was made by JP Morgan Chase Bank, N.A. (RX 2, p. 1). JP Morgan Chase Bank, N.A. is the parent company of Chase Home Finance LLC, the servicing lender. I refer to these entities as Chase, or the lender.

6. Petitioner McCormick owes to USDA Rural Development **\$50,259.94** (as of February 8, 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 2008 (“the debt”). See USDA Rural Development’s Exhibits RX 1 through RX 13, plus Narrative, Witness & Exhibit List, plus replacement exhibits, plus the testimony of Michelle Tanner.

7. Petitioner McCormick and his wife testified that when Petitioner McCormick’s hours were decreased (and consequently his pay), Chase would not reduce the mortgage payments. Chase would not move a payment to the end of the payment schedule. Chase referred the McCormicks to the Hope line, and the McCormicks were trying to negotiate with Chase in 2009 when they were at a low point, but Chase granted no relief. Chase foreclosed and sent a person to their home with a letter evicting them. The McCormicks recall being completely out of the home before Labor Day 2010.

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

9. Pursuant to the *Guarantee*, on September 12, 2011, USDA Rural Development paid a loss claim of \$65,422.94 to the lender Chase. RX 8, esp. pp. 1-2 and 11. The Due Date of the last payment made was November 1, 2008. RX 8, p. 5. The foreclosure sale date was May 6, 2010. RX 8, p. 5. RX 9 summarizes the loss claim paid under the *Guarantee*, showing how the loss claim of \$65,442.94 was calculated. RX 9. The loss claim details are shown in RX 8.

10. At the foreclosure sale on May 6, 2010, the lender Chase (through a subsidiary, Homesales, Inc.) was the highest (and only) bidder, at \$90,000.00. RX 3, p. 2. RX 8, p. 5. Chase was given roughly 6 months from the foreclosure sale, until about November 2, 2010, to market the REO (real estate owned). RX 8, p. 10.

11. Eviction was completed on about August 27, 2010. RX 8, pp. 5 and 10. The McCormicks testified that even before the eviction they had difficulties while living in the home, including electric bills that exceeded \$800.00 per month. There were 3 different electrical boxes; there were electrical shorts; repairmen who came to the home could not diagnose the problems. The McCormicks testified that waterline pipes had not been completely laid when they moved in; they had to do some of the digging. The McCormicks testified that the floors in the home sloped and were not level; there were parts of the home they could not even use and windows that would not open and cabinets that needed repair. The McCormicks testified that the neighborhood was downtrodden and drug-infested; neighboring houses had windows knocked out and were broken into.

12. Chase apparently did not get the home listed until October 14, 2010. The listing price was \$79,900.00. Chase did not sell the REO by the expiration of the marketing period, so a liquidation appraisal was done to determine what credit would be given for the value of the home. The liquidation appraisal, as of December 2, 2010, established the value of the home to be \$50,000.00 (priced to be sold within 30 days; the value would have been \$60,000.00 if based on a reasonable market exposure time). RX 7, esp. p. 10; RX 8, p. 6. Interest stopped accruing on December 2, 2010, the date of the liquidation appraisal. No additional interest will accrue, which makes repaying the debt more manageable.

13. USDA Rural Development reimbursed the lender on September 12, 2011 \$65,422.94 (RX 9), which is the amount USDA Rural Development seeks to recover from Petitioner McCormick under the *Guarantee*, less amounts already collected from Petitioner McCormick through 2 large income tax refunds intercepted and applied to reduce the balance owed (*offsets*).

14. The first large income tax refund (more than \$7,200.00) was intercepted in March 2012. RX 10, p. 6. The second large income tax refund (more than \$7,900.00) was intercepted in February 2013. Michelle Tanner's testimony. A collection fee of about \$17.00 would be subtracted from each income tax refund before the balance would be applied to reduce the debt. The replacement exhibits that will be filed to update and correct RX exhibits such as RX 9 and RX 12 will provide the exact amounts. As I understand it, the remaining balance was **\$50,259.94** as of February 8, 2013 (which does not include the potential remaining collection fees).

15. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$50,259.94**, would increase the balance by \$14,072.79, to \$64,332.73 (as of February 8, 2013).

16. Petitioner McCormick and his wife Angela McCormick testified that the letters dated October 8, 2011 that USDA Rural Development sent to Petitioner McCormick (RX 11) and his wife Angela McCormick (RX 11) were addressed to their correct address, but it was a

difficult time for the McCormicks. They testified that they did not pick up their mail from that post office box frequently, and at times they did not examine the mail before discarding it. Angela McCormick had been caring for her mother during her mother's last illness at about the time the McCormicks were evicted. Angela McCormick was dealing with her mother's death and her own depression at about the time the letters would have come. Petitioner McCormick's hours and pay had been decreased; Angela McCormick has no separate income, as she home-schools (there are 3 children). Given all of these circumstances, Petitioner McCormick should have another debt settlement opportunity; he and his wife Angela McCormick should now have an opportunity to negotiate with USDA Rural Development.

Findings, Analysis and Conclusions

17. The Secretary of Agriculture has jurisdiction over the parties, Petitioner McCormick and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.
18. Petitioner McCormick owes the debt described in paragraphs 5 through 15.
19. **No refund** to Petitioner McCormick of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.
20. Repayment of the debt may occur through **offset** of Petitioner McCormick's **income tax refunds** or other **Federal monies** payable to the order of Petitioner McCormick.
21. Petitioner McCormick should have his "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 McCormick.

Order

22. Until the debt is repaid, Petitioner McCormick 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).
23. USDA Rural Development will recall the debt from the U.S. Treasury for further servicing by USDA Rural Development. THIS SHALL INCLUDE BOTH BORROWERS, WHO REMAIN HUSBAND AND WIFE. Thus, this case is REMANDED to USDA Rural Development to give Petitioner McCormick the opportunity to negotiate a repayment plan with USDA Rural Development. USDA Rural Development will begin the process by

sending a letter to Petitioner McCormick and a letter to his wife Angela McCormick (same address).

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

25. If NO agreed repayment plan between Petitioner McCormick 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 McCormick 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).

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

27. The Garnishment Proceeding and this case are DISMISSED, without prejudice to Petitioner McCormick 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 4th day of April 2013

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Enclosed to only Petitioner McCormick:

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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