AGRICULTURE DECISIONS

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THIS IS A COMPILATION OF DECISIONS ISSUED BY THE SECRETARY OF AGRICULTURE AND THE COURTS PERTAINING TO STATUTES ADMINISTERED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE

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AGRICULTURE MARKETING AGREEMENT ACT

DEPARTMENTAL DECISIONS

In re: GH DAIRY.
AMA Docket No. M 10-0283.
Decision and Order.
Filed April 24, 2012.

AMA.

Alfred Ricciardi, Esq. for Petitioner.
Sharleen Deskins, Esq. for AMS.
Initial Decision by Victor W. Palmer, Administrative Law Judge.
Decision by William Jenson, Judicial Officer.

DECISION AND ORDER

Introduction

On May 19, 2010, GH Dairy instituted this proceeding pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. §§ 601-674) [hereinafter the AMAA], and the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted from Marketing Orders (7 C.F.R. §§ 900.50-.71) by filing a petition.[1] GH Dairy seeks to set aside a final decision published at 75 Fed. Reg. 10,122 (Mar. 4, 2010) [hereinafter the Final Decision] and the implementing final rule published at 75 Fed. Reg. 21,157 (Apr. 23, 2010) [hereinafter the Final Rule]. The challenged Final Rule amends the "producer-handler" definition of all federal milk marketing orders to limit exemption from pooling and pricing provisions to those with total route disposition and sales of packaged fluid milk products to other plants of 3,000,000 pounds or less per month. GH Dairy distributes in excess of 3,000,000 pounds of packaged fluid milk products per month (Pet. at 2 ¶ 3); therefore, the plant facilities of GH Dairy's integrated operation

[1] GH Dairy entitles its petition "Verified Petition for Expedited Adjudicatory Review of Final Agency Decision, Published at 75 Fed. Reg. 10122 (Mar. 4, 2010), and of Final Order, Published at 75 Fed. Reg. 21157 (Apr. 23, 2010), in National Hearing Docket No. AMS-DA-09-0007" [hereinafter the Petition].

became regulated, pursuant to the Final Rule, as a fully regulated distributing plant, and GH Dairy's dairy farm facilities were deemed a "producer" (Pet. at 5-6 ¶ 21). GH Dairy is required by the Final Rule to pay into the federal milk marketing order's producer equalization fund, the difference between its higher use-value of milk and the monthly blend price that is computed under the federal milk marketing order.

GH Dairy contends (1) the Secretary of Agriculture has no authority under the AMAA to issue the Final Rule, as it regulates producer-handlers who do not purchase milk; (2) the Final Rule violates the AMAA's requirement of uniform minimum pricing among handlers in 7 U.S.C. § 608c(5)(C); (3) the Final Rule violates the AMAA's prohibition on trade barriers in 7 U.S.C. § 608c(5)(G); (4) the Final Rule does not comply with the "only practical means" requirement of the AMAA in 7 U.S.C. § 608c(9)(B); (5) the Final Decision and the Final Rule do not comply with the Regulatory Flexibility Act; (6) the Final Decision and Final Rule are not supported by substantial evidence; and (7) critical evidence was excluded from the formal rulemaking proceeding upon which the Final Decision and Final Rule are based.

Alfred W. Ricciardi of Aiken, Schenk, Hawkins & Ricciardi, P.C., Phoenix, Arizona, and Ryan K. Miltner of The Miltner Law Firm, LLC, New Knoxville, Ohio, represent GH Dairy. Sharlene Deskins, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represents the Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter the Administrator]. The parties agreed that this proceeding should be decided on the basis of the formal rulemaking record upon which the contested Final Decision and Final Rule are based, with both parties filing briefs and an Appendix of excerpts of the formal rulemaking record.[2] In addition to the briefs filed by the parties, the International Dairy Foods Association [hereinafter IDFA], represented by Steven J. Rosenbaum, Covington & Burling, LLP, Washington, DC, and the National Milk Producers Federation [hereinafter NMPF] represented by Marvin Beshore, Harrisburg, Pennsylvania, filed an amici brief in opposition to GH Dairy's initial brief. GH Dairy filed, in addition to its

[2] References to the transcript of the formal rulemaking hearing conducted by Administrative Law Judge Jill S. Clifton [hereinafter ALJ Clifton] in Cincinnati, Ohio, during the period May 4, 2009, through May 19, 2009, are designated "Tr." References to the Appendix of excerpts of the formal rulemaking record are designated as "App."

initial brief, a brief in rebuttal of both the Administrator's brief and IDFA and NMPF's amici brief.

On October 5, 2011, Administrative Law Judge Victor W. Palmer [hereinafter ALJ Palmer] issued a Decision and Order: (1) concluding the Final Decision and Final Rule are in accordance with law and within the Secretary of Agriculture's authority under the AMAA, (2) concluding the Final Decision and Final Rule are supported by substantial evidence of record, (3) concluding critical evidence was not excluded from the formal rulemaking record, (4) denying the relief sought by GH Dairy, and (5) dismissing GH Dairy's Petition. On November 4, 2011, GH Dairy appealed ALJ Palmer's Decision and Order to, and requested oral argument before, the Judicial Officer. On November 25, 2011, IDFA and NMPF filed a motion for leave to file an amicus brief in opposition to GH Dairy's appeal to the Judicial Officer, which I granted.[3] On December 8, 2011, the Administrator filed Respondent's Opposition to the Petitioner's Appeal Petition. On December 16, 2011, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

Based upon a careful review of the record, I adopt, with minor changes, ALJ Palmer's findings of fact, conclusions of law, and order. A discussion of the issues raised in GH Dairy's appeal of ALJ Palmer's Decision and Order precedes the findings of fact, conclusions of law, and order.

GH Dairy's Request for Oral Argument

GH Dairy's request for oral argument before the Judicial Officer, which the Judicial Officer may grant, refuse, or limit,[4] is refused because GH Dairy, the Administrator, IDFA, and NMPF have thoroughly briefed the issues. Thus, oral argument would serve no useful purpose.

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[3] Ruling Granting IDFA and NMPF's Motion for Leave to File Amicus Brief (Mar. 19, 2012).

[4] 7 C.F.R. § 900.65(b)(1).

AGRICULTURE MARKETING AGREEMENT ACT

Regulatory Framework

The two distinctive and essential phenomena of the milk industry are a basic two-price structure that permits a higher return for the same product, depending on its ultimate use, and the cyclical characteristic of production.

> Milk has essentially two end uses: as a fluid staple of daily consumer diet, and as an ingredient in manufactured dairy products such as butter and cheese. Milk used in the consumer market has traditionally commanded a premium price, even though it is of no higher quality than milk used for manufacture. . . . At the same time the milk industry is characterized by periods of seasonal overproduction. The winter months are low in yield and conversely the summer months are fertile. In order to meet fluid demand which is relatively constant, sufficiently large herds must be maintained to supply winter needs. The result is oversupply in the more fruitful months.

Zuber v. Allen, 396 U.S. 168, 172-73 (1969). Prior to regulation, producers[5] intensely competed with one another to sell their milk to handlers[6] who would ultimately use the milk for the fluid milk market. Moreover, handlers would obtain bargains during glut periods.
Congress enacted the AMAA "to remove ruinous and self-defeating competition among the producers and permit all farmers to share the benefits of fluid milk profits according to the value of goods produced and services rendered." *Zuber v. Allen*, 396 U.S. 168, 180-81 (1969). Congress authorized the Secretary of Agriculture to issue regulations, referred to as "orders," that regulate the handling of agricultural commodities (7 U.S.C. § 608c(3)-(4)). In the case of milk and milk products, the AMAA provides that orders shall contain one or more of the terms and conditions listed in 7 U.S.C. § 608c(5). One of the terms listed in 7 U.S.C. § 608c(5) provides for "[c]lassifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each

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[5] Generally, a "producer" is an entity that collects milk directly from the animals.
[6] Generally, a "handler" is an entity that takes the milk and turns it into an end product and resells the end product either to consumers or to manufacturers.

such use classification which all handlers shall pay . . . for milk purchased from producers or associations of producers" (7 U.S.C.§ 608c(5)(A)).

To achieve equality among producers, each federal milk marketing order creates a market-wide pricing pool for handlers. Federal milk marketing orders set minimum prices that the handlers must pay for classes of milk. Handlers who deal in the fluid milk market pay into a pool that is then drawn on by handlers who deal in manufactured milk products. Producers receive a uniform minimum price, referred to as the "blend price," from handlers irrespective of the use to which to which the milk is eventually put:

> [T]he [AMAA] authorizes the Secretary to devise a method whereby uniform prices are paid by milk handlers to producers for all milk received, regardless of the form in which it leaves the plant and its ultimate use. Adjustments are then made among handlers so that each eventually pays out-of-pocket an amount equal to the actual utilization value of the milk he has bought.

Lehigh Valley Coop. Farmers, Inc. v. United States, 370 U.S. 76, 79-80 (1962).

The effect of a pricing pool has been succinctly illustrated, as follows:

> Suppose Handler A purchases 100 units of Class I (fluid) milk from Producer A at the minimum value of $3.00 per unit. Assume further that Handler B purchases 100 units of Class II (soft milk products) milk from Producer B at the minimum value of $2.00 per unit, and that Handler C purchases 100 units of Class III (hard milk products) milk from Producer C at $1.00 per unit. Assuming that this constitutes the entire milk market for a regulatory district, during this period the total price paid for milk is $600.00, making the average price per unit of milk $2.00. Thus, under the regulatory scheme, Producers A, B, and C all receive $200.00 for the milk they supplied, irrespective of

> the use to which it was put. However, Handler A must, in addition to the $200.00 that it must tender to Producer A, pay $100.00 into the settlement fund because the value of the milk it purchased exceeded the regulatory average price. Along the same vein, Handler C will receive $100.00 from the settlement fund because it will pay Producer C more than the milk it received was worth. The pool achieves equality among producers, and uniformity in price paid by handlers.

Stew Leonard's v. Glickman, 199 F.R.D. 48, 50 (D. Conn. 2001).

Historically, the Secretary of Agriculture has chosen not to require those entities that both produce and handle their own milk, referred to as "producer-handlers," to make payments into the pricing pool. Each federal milk marketing order has its own definition of the term "producer-handler" so as to exempt milk handled by a producer-handler from the pricing and pooling regulations of the order in slightly different ways. Typically, a producer-handler conducts a small family-type operation, processing, bottling, and distributing only his own farm production. The rationale for the producer-handler exemption is that producer-handlers are so small that they have little or no effect on the pool. *Stew Leonard's v. Glickman*, 199 F.R.D. 48, 50 (D. Conn. 2001) (quoting Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders, 25 Fed. Reg. 7819, 7825 (Aug. 16, 1960)). Nonetheless, for many years, the various definitions of the term "producer-handler" did not include limits on the size of producer-handlers exempt from the pooling and pricing regulations of federal milk marketing orders. The Final Rule limits the exemption of producer-handlers from the pricing and pooling requirements of federal milk marketing orders to those with total Class I route disposition and sales of packaged fluid milk products to other plants of 3,000,000 pounds or less per month in all federal milk marketing orders.

GH Dairy's Appeal Petition

GH Dairy raises 12 issues in its "Appeal to the Judicial Officer and Request for Oral Argument" [hereinafter Appeal Petition]. First, GH Dairy contends ALJ Palmer erroneously concluded the Secretary of Agriculture is authorized under the AMAA to regulate producer-handlers

who do not purchase milk. GH Dairy contends the plain language of the AMAA only authorizes the Secretary of Agriculture to regulate handlers who purchase milk from producers. (Appeal Pet. at 2-6 ¶ 2a.) The AMAA authorizes the Secretary of Agriculture to issue federal milk marketing orders which classify milk in accordance with the form or purpose of its use, and fix "minimum prices for each such use classification which all handlers shall pay . . . for milk purchased from producers or associations of producers" (7 U.S.C.§ 608c(5)(A)).

This provision is the "plain language" of the AMAA upon which GH Dairy relies. But this language was found by the Supreme Court to require interpretation within the full context of the AMAA and the legislative intent underlying the enactment of the AMAA. When so interpreted, the word "purchased" has the meaning stated by the Supreme Court in its decision holding the AMAA, and federal milk marketing orders issued under the AMAA, to be constitutional. *United States v. Rock Royal Co-op*, 307 U.S. 533 (1939).

Rock Royal rejected a challenge asserting that the plain meaning of "purchased," as used in the AMAA, precluded the application of a federal milk marketing order's pricing and pooling provisions to milk handled by a cooperative of dairy farmers distributing milk as an agent. The Supreme Court stated:

> It is obvious that the use of the word 'purchased' in the Act, Section 8c(5)(A) and (C), would not exclude the 'sale' type of cooperative. When 8c(5)(F) was drawn, however, it was made to apply to both the 'sale' and 'agency' type without distinction. This would indicate there had been no intention to distinguish between the two types by (A) and (C). The section which authorizes all orders, Section 8c(1), makes no distinction. The orders are to be applicable to 'processors, associations of producers, and others engaged in the handling of commodities. The reports on the bill show no effort to differentiate [citing H.R. Rep. No. 74-1241 (1935); S. Rep. No. 74-1011 (1935)]. Neither do the debates in Congress. The statutory provisions for equalization of the burdens of surplus would be rendered nugatory by the exception of

> 'agency' cooperatives. The administrative construction has been to include such organizations as handlers. With this we agree. As here used the word 'purchased' means 'acquired for marketing.'

United States v. Rock Royal Co-op, 307 U.S. 533, 579-80 (1939) (footnotes omitted).

GH Dairy argues "acquired for marketing" is limited to milk handled by cooperatives acting as intermediaries and it does not apply to milk produced by producer-handlers (Appeal Pet. at 2-3 ¶ 2a). However, in *Ideal Farms, Inc. v. Benson,* 288 F.2d 608 (3d Cir. 1961), *cert. denied*, 372 U.S. 965 (1963), the Third Circuit dismissed the argument that only "purchased" milk is subject to regulation and that the word "purchased" cannot be construed to include milk which the appellants had obtained from their own farms. The Third Circuit affirmed a lower court decision and held that the lower court had correctly concluded:

> '* * * that the provisions of [the federal milk marketing order] are fully in accord with the enabling statute and that the refusal of the Secretary to exempt the [appellants] from the obligation to include their own-produced milk in the calculation of their net pool obligations, was in all respects legal and within his statutorily delegated power.'

Ideal Farms, Inc. v. Benson*,* 288 F.2d 608, 618 (3d Cir. 1961), *cert. denied*, 372 U.S. 965 (1963).

In *Freeman v. Vance*, 319 F.2d 841 (5th Cir. 1963) (per curiam), the Fifth Circuit, relying on *Ideal Farms*, upheld a federal milk marketing order that made milk produced by a person, who also operated the plant in which the milk was processed and from which plant the milk was distributed as fluid milk, subject to pricing, pooling, and administrative assessment provisions of the order.

GH Dairy contends *Ideal Farms* and *Vance* are inapposite because they each dealt with handlers that purchased milk from other sources (Appeal Pet. at 3-4 ¶ 2a). However, the Court in *Ideal Farms*

specifically addressed the issue of a handler, who is also the producer, as follows:

> In effect appellants make the argument that although an agency cooperative was held to have 'purchased' milk from its principals in *Rock Royal* and *Elm Spring*, two parties were involved whereas here there being only one party no 'purchase' is possible as the word was construed in those cases. Such reasoning would mean Congress intended to regulate a handler if he was the agent of a producer, but not a handler who is also the producer, although the effect in both instances is the same. Should the fact of agency make such a crucial difference? We do not think such an illogical distinction was intended. Although not embodying the fact pattern of specific identity of producer and handler in the one entity present in appellants' situations the three cited cases make clear that the word 'purchased' is to be liberally construed so as to achieve the purpose of the Act and strongly buttress the position of the Secretary that 'own-produced' milk of a handler is subject to regulation. The purpose of the Act and Order was succinctly stated in *Elm Spring Farm v. United States*, [127 F.2d 920, 927 (1st Cir. 1942)]:
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> '* * * The Act and Order seek to achieve a fair division of the more profitable fluid milk market among all producers, thereby eliminating the disorganizing effects which had theretofore been a consequence of cutthroat competition among producers striving for the fluid milk market. This is clearly set forth in the opinion in *United States v. Rock Royal Co-operative, Inc.,* 1939, 307 U.S. 533, 548, 550, 59 S.Ct. 993, 83 L.Ed. 1446.'
>
> Were we to accept appellants' construction of the word 'purchased' they would avoid the intent of the Act to achieve a fair division of the more profitable fluid milk market among all producers and they would avoid the necessity of sharing the burden of surplus milk. *See United States v.*

> *Rock Royal Co-operative, Inc., supra*, 307 U.S. at pages 548, 580, 59 S.Ct. at pages 1001, 1016.

Ideal Farms, Inc. v. Benson, 288 F.2d at 613.

GH Dairy contends a subsequent decision, *United States v. United Dairy Farmers Coop. Ass'n,* 611 F.2d 488 (3d Cir. 1979) (per curiam), limits the holding in *Ideal Farms* and *Vance* to handlers that purchase at least some milk produced by other parties (Appeal Pet. at 4 ¶ 2a). Although *United Dairy Farmers* alludes to the fact that the producers held subject to regulation as handlers in *Ideal Farms* dealt partially in milk produced at their own facilities, there is nothing in *United Dairy Farmers* indicating any intent to narrow the Third Circuit's holding in *Ideal Farms*. *United Dairy Farmers* was limited to its affirmance of a lower court decision that had granted a summary judgment motion by the Secretary of Agriculture on the grounds that the appellant, a dairy cooperative that transported, processed, and distributed its own milk, was a "handler" within the meaning of the AMAA and therefore must first exhaust the administrative remedy provided handlers by 7 U.S.C. § 608c(15)(A).

Moreover, there are more recent interpretations of the Secretary of Agriculture's authority to regulate an individual who performs both producer and handler functions when acting as a handler that follow and are consistent with *Ideal Farms*. *See Horne v. U.S. Dep't of Agric.*, Case No. 10-15270, 2012 WL 762997 (9th Cir. Mar. 12, 2012); *Dairylea Coop. v. Butz*, 504 F.2d 80, 83 n. 6 (2d Cir. 1974); *Stew Leonard's v. Glickman*, 199 F.R.D. 48 (D. Conn. 2001). *Horne* concerns similar regulation under a Raisin Marketing Order:

> . . . the AMAA contemplates that an individual who performs both producer and handler functions may still be regulated in his capacity as a handler. Even if the AMAA is considered "silent or ambiguous" on the regulation of individuals who perform both producer and handler functions, we must give *Chevron* deference to the permissible interpretation of the Secretary of Agriculture, who is charged with administering the statute. *Chevron, USA, Inc. v. Natural Res. Def. Council, Inc.,* 467 U.S. 837,

> 842-43, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984); *see* 7 U.S.C. § 608c(1); *see also Morales-Izquierdo v. Dep't of Homeland Sec.,* 600 F.3d 1076, 1086-87 (9th Cir. 2010); *Midway Farms v. U.S. Dep't of Agric*., 188 F.3d 1136, 1140 n. 5 (9th Cir. 1999). Other courts have similarly rejected the Hornes' argument that a producer who handles his own product for market is statutorily exempt from regulation under the AMAA. *See*, *e.g., Freeman v. Vance*, 319 F.2d 841, 842 (5th Cir. 1963) (per curiam); *Ideal Farms, Inc. v. Benson*, 288 F.2d 608, 614 (3d Cir. 1961), *cert. denied*, 372 U.S. 965, 83 S.Ct. 1087, 10 L.Ed.2d 128 (1963); *Evans*, 74 Fed. Cl. at 557-58. Deferring to the agency's permissible interpretation of the statute, as we must, we conclude that applying the Raisin Marketing Order to the Hornes in their capacity as handlers was not contrary to the AMAA.

Horne v. U.S. Dep't of Agric., Case No. 10-15270 slip op. at 4, 2012 WL 762997 (9th Cir. Mar. 12, 2012).

GH Dairy also argues that *Rock Royal* and *Ideal Farms* are old precedents that ALJ Palmer erroneously followed. GH Dairy, citing *Carcieri v. Salazar*, 555 U.S. 379 (2009), and *Rapanos v. United States*, 547 U.S. 715 (2006), contends ALJ Palmer erroneously failed to follow more recent Supreme Court precedent requiring that statutes be interpreted according to their plain meaning. (Appeal Pet. at 5-6 ¶ 2a.)

The fact that various Supreme Court decisions since *Chevron* have been decided on the basis of a statute's plain meaning rather than an agency's interpretation, does not mean ALJ Palmer was, and I am now, free to disregard either the interpretation of the AMAA's language by the Supreme Court in *Rock Royal* or subsequent court decisions. As the Supreme Court cautioned in *Rodriguez de Quijas v. Shearson/American Express, Inc*., 490 U.S. 477, 484 (1989):

> If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which

> directly controls, leaving to this Court the prerogative of overruling its own decisions.

The fact that the challenged interpretation by the Supreme Court in *Rock Royal*, was made in 1939, without subsequent alteration by Congress, provides additional reason why it must be followed. *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 764 (1998), *quoting Illinois Brick Co. v. Illinois*, 431 U.S. 720, 736 (1977):

> ("[W]e must bear in mind that considerations of *stare decisis* weigh heavily in the area of statutory construction, where Congress is free to change this Court's interpretation of its legislation").

Moreover, I find the plain meaning of the "purchased from producers" language of 7 U.S.C. § 608c(5)(A) to be less than obvious in light of 7 U.S.C. § 608c(5)(C):

> **§ 608c. Orders**
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> . . . .
>
> **(5) Terms—Milk and its products**
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> In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7) of this section) no others:
>
> . . . .
>
> (C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection, providing a method for making adjustments in payments, as among handlers (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with paragraph (A) of this subsection.

7 U.S.C. § 608c(5)(C). The "purchased from producers" language of 7 U.S.C. § 608c(5)(A) must necessarily be reconciled with that of 7 U.S.C. § 608c(5)(C) which contemplates the regulation of producers

who are handlers.[7] To do so, the legislative history of the AMAA must be consulted and deference given to administrative interpretations by the Secretary of Agriculture. Exactly what *Rock Royal* and *Ideal Farms* did, and what is still appropriate under *Chevron*.
Second, GH Dairy contends ALJ Palmer erroneously held the Final Rule does not conflict with a prior statement by the Secretary of Agriculture regarding his authority to regulate producer-handlers (Appeal Pet. at 6-7 ¶ 2b).

GH Dairy relies upon the following response by the Agricultural Marketing Service, United States Department of Agriculture [hereinafter AMS], to a public comment in a formal rulemaking proceeding:

> One of the public comments received proposed that the exemption of producer-handlers from the regulatory plan of milk orders be eliminated. This proposal is denied. In the legislative actions taken by the Congress to amend the AMAA since 1965, the legislation has consistently and specifically exempted producer-handlers from regulation. The 1996 Farm Bill, unlike previous legislation, did not amend the AMAA and was silent on continuing to preserve the exemption of producer-handlers from regulation. However, past legislative history is replete with the specific intent of Congress to exempt producer-handlers from regulation. If it had been the intent of Congress to remove the exemption, Congress would likely have spoken directly to the issue rather than through omission of language that had, for over 30 years, specifically addressed the regulatory treatment of producer-handlers.

64 Fed. Reg. 16,026, 16,135 (Apr. 2, 1999).

ALJ Palmer characterized AMS' response to the public comment as "inapt" and found the AMS response was "taken out of context" (ALJ Palmer's Decision at 15). I find the AMS response to the public

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[7] *See* Dairylea Coop. v. Butz, 504 F.2d 80, 83 n.6 (2d Cir. 1974) (stating "producers are exempted from regulation only in their capacities as producers" (7 U.S.C. § 608c(13)(B)); "[w]hen a producer acts as a handler he is not so exempted" (7 U.S.C. § 608c(5)(C))).

comment is simply wrong. In any event, the AMS response to the public comment has no effect on the Secretary of Agriculture's actual authority under the AMAA to regulate producer-handlers. The Secretary of Agriculture's authority to regulate producer-handlers when they act as handlers has consistently been recognized by the courts, Congress and, but for the quoted response to a public comment, by the Secretary of Agriculture.

Third, GH Dairy contends ALJ Palmer's reference to the Milk Regulatory Equity Act of 2005 [hereinafter the MREA], as supporting the Secretary of Agriculture's power to regulate producer-handlers, is misplaced (Appeal Pet. at 7 ¶ 2c).

I agree with ALJ Palmer. Any doubt that the Secretary of Agriculture is empowered under the AMAA to regulate producer-handlers under a federal milk marketing order was clarified by Congress when it enacted the MREA, which amended the AMAA.[8] Congress specifically approved and adopted regulation of producer-handlers handling over 3,000,000 pounds of milk per month in Arizona.

Fourth, GH Dairy contends ALJ Palmer erroneously concluded the Final Rule is supported by substantial evidence (Appeal Pet. at 7-11 ¶ 2d).

When reviewing an agency action, the reviewer considers whether the agency acted within the scope of its legal authority, whether the agency has explained its decision, whether the facts on which the agency purports to have relied have some basis in the record, and whether the agency considered the relevant factors.[9] There is no requirement, as GH Dairy asserts (Appeal Pet. at 8 ¶ 2d), for either ALJ Palmer or the Secretary of Agriculture to discuss evidence that competes with, or contradicts, the evidence that supports the Final Rule. GH Dairy has the burden of proof to establish that the record evidence does not support

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[8] The MREA is codified at 7 U.S.C. § 608c(5)(M)-(O).

[9] Marsh v. Oregon Natural Res. Council, 490 U.S. 360, 378 (1989); Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402, 415-16 (1971); Fund for Animals v. Babbitt, 903 F. Supp. 96, 105 (D.D.C. 1995).

the Final Rule.[10] The existence of regulatory alternatives, even those which might be more persuasively reasonable is not cognizable on review as a reason to overturn the Final Rule.[11] It is not sufficient that the record contain evidence supporting GH Dairy's position. On the contrary, GH Dairy must establish that the record cannot sustain the conclusion reached by the Secretary of Agriculture.

A review of the rulemaking record reveals that the Final Rule is supported by substantial evidence. ALJ Palmer accurately described the extensive evidence, as follows:

> The evidence favoring greater restrictions on producer-handler exemption from Federal milk marketing order pricing and pooling regulation included analysis of marketing practices and trends by consultant dairy economists who qualified as experts, as well as the testimony by dairy farmers and plant operators on their personal observations and business experiences. These witnesses gave testimony on the disorderly marketing conditions they believed were presently being caused, and that were likely to become greater in the future, due to producer-handlers becoming large, integrated milk production and handling operations significantly different from the small *de minimis* dairy farm operations that the existing producer-handler exemptions were fashioned to accommodate.

ALJ Decision at 18.

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[10] United States v. Rock Royal Co-op, 307 U.S. 533, 567 (1939); Lewes Dairy, Inc. v. Freeman, 401 F.2d 308, 316-17 (3d Cir. 1968), cert. denied, 394 U.S. 929 (1969); Boonville Farms Coop. v. Freeman, 358 F.2d 681, 682 (2d Cir. 1966); Sterling Davis Dairy v. Freeman, 253 F. Supp. 80, 83 (D.N.J. 1965); Windham Creamery, Inc. v. Freeman, 230 F. Supp. 632, 635-36 (D.N.J. 1964), aff'd, 350 F.2d 978 (3d Cir. 1965), cert. denied, 382 U.S. 979 (1966); Bailey Farm Dairy Co. v. Jones, 61 F. Supp. 209, 217 (E.D. Mo. 1945), aff'd, 157 F.2d 87 (8th Cir.), cert. denied, 329 U.S. 788 (1946); Wawa Dairy Farms, Inc. v. Wickard, 56 F. Supp. 67, 70 (E.D. Pa. 1944), aff'd, 149 F.2d 860 (3d Cir. 1945).

[11] Lewes Dairy, Inc. v. Freeman, 401 F.2d 308, 319 (3d Cir. 1968), cert. denied, 394 U.S. 929 (1969).

GH Dairy disagrees with the evidence supporting the Final Rule; however, GH Dairy's disagreement does not provide a basis for rejection of the Final Rule or a reversal of ALJ Palmer's Decision upholding the Final Rule. Based upon my review of the formal rulemaking record, I find the Secretary of Agriculture acted within the scope of his legal authority, the Secretary of Agriculture explained the Final Rule, the Secretary of Agriculture relied on facts that have a basis in the formal rulemaking record, and the Secretary of Agriculture considered the relevant factors.

Fifth, GH Dairy contends ALJ Palmer erroneously concluded the Final Rule does not violate the AMAA's prohibition on trade barriers. GH Dairy contends the Final Rule subjects it to compensatory payments prohibited by 7 U.S.C. § 608c(5)(G). (Appeal Pet. at 11-13 ¶ 2e.)

The AMAA provides that no federal milk marketing order may prohibit or limit the marketing in the marketing area of milk or milk products produced in any production area in the United States, as follows:

> **§ 608c. Orders**
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> . . . .
>
> **(5) Terms—Milk and its products**
>
> In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7) of this section) no others:
>
> . . . .
>
> (G) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

7 U.S.C. § 608c(5)(G).

Courts have construed 7 U.S.C. § 608c(5)(G) as prohibiting the establishment of geographic economic trade barriers among and between milk marketing areas.[12] The trade barrier provision in 7 U.S.C. § 608c(5)(G) prohibits compensatory payments on nonpool milk brought into an area covered by a federal milk marketing order that are so excessive as to constitute an economic barrier to milk being shipped into that area.

The charges GH Dairy seeks to avoid are not compensatory payments assessed on nonpool milk GH Dairy handles. They are, instead, charges GH Dairy must pay under the federal milk marketing order where GH Dairy is regulated as a handler of pool milk. As is presently the case for any other handler regulated by a federal milk marketing order disposing its milk as Class I, GH Dairy is required to pay the difference between the federal milk marketing order's Class I price and the blend price whenever the milk it handles goes to Class I fluid milk outlets. Such payments are not "compensatory payments" assessed upon nonpool milk brought into a federal milk marketing order area from sources outside the market, as were the payments that were the subject of the two cases relied upon by GH Dairy, *Lehigh Valley Coop. Farmers, Inc. v. United States*, 370 U.S. 76 (1962), and *Sani-Dairy, a Div. of Penn Traffic Co. v. Espy*, 939 F. Supp. 410 (W.D. Pa 1993), *aff'd*, 91 F.3d 15 (3d Cir. 1996). GH Dairy is subject to the federal milk marketing order's regulation as a handler of pool milk and, as is the case with all other pool handlers, must therefore account for the milk it handles in accordance

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[12] *See Polar Ice Cream & Creamery Co. v. Andrews*, 375 U.S. 361, 379 (1964) (stating the AMAA prevents the Secretary of Agriculture from establishing trade barriers to the importation of milk from other production areas in the United States); *Lehigh Valley Coop. Farmers, Inc. v. United States*, 370 U.S. 76, 97 (1962) (explaining that 7 U.S.C. § 608c(5)(G) is intended to prevent the Secretary of Agriculture from establishing any kind of economic trade barriers); *Schepps Dairy, Inc. v. Bergland*, 628 F.2d 11, 20 (D.C. Cir. 1979) (stating 7 U.S.C. § 608c(5)(G) is addressed primarily to obstacles to the marketing in one area of milk and milk products produced in another area); *Lewes Dairy, Inc. v. Freeman*, 401 F.2d 308, 315 (3d Cir. 1968) (observing that 7 U.S.C. § 608c(5)(G) evolved out of the congressional intent to restrain the Secretary of Agriculture from imposing regulations which would burden the free flow of milk and milk products in commerce), *cert. denied*, 394 U.S. 929 (1969); *Lanco Dairy Farms Coop. v. Secretary of Agriculture*, 572 F. Supp.2d 633, 637-38 (D. Md. 2008) (stating 7 U.S.C. § 608c(5)(G) has been construed as a prohibition on the enactment of economic trade barriers among and between milk marketing areas).

with the federal milk marketing order's pricing and pooling provisions which are identical for all pool milk handlers. Therefore, I affirm ALJ Palmer's conclusion that the Final Rule does not violate 7 U.S.C. § 608c(5)(G).

Sixth, GH Dairy contends ALJ Palmer erroneously failed to address GH Dairy's claim that the pool payments from producer-handlers required by the Final Rule do not comply with 7 U.S.C. § 608c(5)(C) because the required pool payments result in producer-handlers bearing mandatory minimum prices far in excess of the fixed Class I prices (Appeal Pet. at 13 ¶ 2e).

I disagree with GH Dairy that ALJ Palmer failed to address GH Dairy's claim that the pool payments from producer-handlers required by the Final Rule do not comply with 7 U.S.C. § 608c(5)(C). ALJ Palmer specifically addressed the issue of non-uniform pricing and found no merit in GH Dairy's claim (ALJ Palmer's Decision at 33-34). Moreover, I find no merit in GH Dairy's claim that eliminating the exemption from pooling for large producer-handlers violates the requirement of uniform minimum prices among handlers in 7 U.S.C. § 608c(5)(C). GH Dairy is subject to the same minimum class prices as all pool handlers. The fact that GH Dairy could have an actual cost that is higher than the regulated minimum prices is immaterial. Federal milk marketing order class prices are minimum prices and GH Dairy's cost above those minimum prices has no legal significance.

Seventh, GH Dairy contends ALJ Palmer erroneously upheld ALJ Clifton's exclusion of Jeff Sapp's proffered declaration and attached exhibits during the May 2009 formal rulemaking hearing upon which the challenged Final Decision and Final Rule are based (Appeal Pet. at 13-14 ¶ 2f).

During the May 2009 formal rulemaking hearing, Mr. Sapp's attorney advised ALJ Clifton that Mr. Sapp was unable to attend the formal rulemaking hearing and moved for the admission into evidence of Mr. Sapp's written declaration with attached exhibits. ALJ Clifton denied the motion, but ordered the declaration marked as Exhibit 92 and the exhibits attached to the declaration marked as Exhibit 93, both of which ALJ Clifton ordered to be placed under seal (Tr. 3263-94). On

July 23, 2009, ALJ Clifton issued rulings denying motions to reverse the exclusion of Mr. Sapp's declaration and attached exhibits.

The Rules of Practice and Procedure Governing Proceedings To Formulate Marketing Agreements and Marketing Orders (7 C.F.R. §§ 900.1-.18) require actual testimony that is subject to cross-examination, as follows:

> **§ 900.8 Conduct of the hearing.**
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> . . . .
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> (b) *Appearances*—(1) *Right to appear*. At the hearing, any interested person shall be given an opportunity to appear, either in person or through his authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding. Any interested person who desires to be heard in person at any hearing under these rules shall, before proceeding to testify, state his name, address, and occupation. If any such person is appearing through a counsel or representative, such person or such counsel or representative shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names and addresses and occupations of such person and such counsel or representative. Any such person or such counsel or representative shall give such other information respecting his appearance as the judge may request.
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> . . . .
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> (d) *Evidence*—(1) *In general*. The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.
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> (i) Every witness shall, before proceeding to testify, be sworn or make affirmation. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts.

7 C.F.R. § 900.8(b)(1), (d)(1)(i).

Therefore, I agree with ALJ Palmer's conclusion that ALJ Clifton's exclusion of Mr. Sapp's written declaration and attached exhibits was not error.

Moreover, I have reviewed Mr. Sapp's declaration and the attached exhibits (App. M) and find them to be inconsequential to the challenged Final Decision and Final Rule. Mr. Sapp's company, Nature's Dairy, is a producer-handler whose operation, according to his declaration, has less than 3,000,000 pounds of monthly milk distribution and, as such, remains exempt from federal milk marketing order regulation. The declaration and the exhibits Mr. Sapp sought to have introduced concerned the economic disadvantages that a small producer-handler can experience in competing with large handlers. Although GH Dairy is a producer-handler, it is not a small producer-handler. Mr. Sapp's declaration, if received, would have no relevance to GH Dairy or to any other of the large producer-handlers that are no longer exempt from federal milk marketing orders. Even if I were to find ALJ Clifton's exclusion of Mr. Sapp's declaration and the attached exhibits error (which I do not so find), I would find the error to be harmless error that does not merit setting aside the Final Decision and the Final Rule or reopening the record upon which Final Decision and the Final Rule are based for the receipt of Mr. Sapp's declaration and attached exhibits.

Eighth, GH Dairy contends ALJ Palmer erroneously concluded that the Final Decision and Final Rule comply with the Regulatory Flexibility Act (Appeal Pet. at 13-15 ¶ 2f).

The Notice of Hearing applicable to the challenged Final Decision and Final Rule includes an initial Regulatory Flexibility Act analysis (74 Fed. Reg. 16,296 (Apr. 9, 2009)). The Final Decision certified that the "proposed rule will not have a significant economic impact on a substantial number of small entities" (75 Fed. Reg. 10,122 (Mar. 4, 2010)) and provides a statement of the factual basis for the certification, as required by 5 U.S.C. § 605(b). The statement is in the form of findings that demonstrate that all essential elements had been considered and provides a rational explanation of the choices made together with their anticipated effects on various industry members large and small. (75 Fed. Reg. 10,122, 10,122-24 (Mar. 4, 2010).) Based upon my review of the Regulatory Flexibility Act analyses conducted in

connection with the Final Decision and the Final Rule, I conclude ALJ Palmer correctly found that the Secretary of Agriculture complied with the Regulatory Flexibility Act.

Ninth, GH Dairy asserts ALJ Palmer erroneously failed to address the Secretary of Agriculture's decision to depart from the prior position that producer-handlers were to be classified by their size as handlers, rather than by their size as producers (Appeal Pet. at 14 ¶ 2f). However, GH Dairy fails to explain the relevance of the Regulatory Flexibility Act analyses used in previous rulemaking proceedings and fails to cite any basis for its contention that a change in position, without explanation, renders a Regulatory Flexibility Act analysis flawed. I do not find the Regulatory Flexibility Act analyses used in previous rulemaking proceedings relevant to the challenged Final Decision and Final Rule; therefore, I reject GH Dairy's contention that ALJ Palmer's failure to address previous rulemaking proceedings, is error.

Tenth, GH Dairy contends ALJ Palmer's adoption of the argument that dairy farm size is the appropriate measurement for distinguishing small producer-handlers from large producer-handlers, is error (Appeal Pet. at 14-15 ¶ 2f).

The Final Decision explains the reason for the use of a producer-handler's dairy farm operation to distinguish producer-handlers that are small from producer-handlers that are large, as follows:

> Producer-handlers are persons who operate dairy farms and generally process and sell only their own milk production. A pre-condition to operating a processing plant as a producer-handler is the operation of a dairy farm. Consequently, the size of the dairy farm determines the production level of a producer-handler's farm operation and is also the controlling factor of the volume that is processed by the plant that is available for distribution. Accordingly, the major consideration in determining whether a producer-handler is a large or small business is its capacity as a dairy farm. Under SBA criteria, a dairy farm is considered large if its gross revenue exceeds $750,000 per year which

> equates to a production guideline of 500,000 pounds of milk per month. Accordingly, a producer-handler with Class I disposition and sales of packaged fluid milk products to other plants in excess of three million pounds per month is considered by this decision to be a large business.

75 Fed. Reg. 10,122, 10,147 (Mar. 4, 2010).

Based upon the foregoing explanation, I find dairy farm size is a reasonable method by which to distinguish small producer-handlers from large producer-handlers; therefore, I reject GH Dairy's contention that ALJ Palmer's adoption of the argument that dairy farm size is an appropriate measurement for distinguishing small producer-handlers from large producer-handlers, is error.

Eleventh, GH Dairy contends ALJ Palmer erroneously dismissed the Regulatory Flexibility Act as merely procedural and devoid of substantive requirements. GH Dairy contends the Regulatory Flexibility Act requires analysis; not merely rote recitation of compliance. (Appeal Pet. at 15 ¶ 2f.)

A number of courts have characterized the Regulatory Flexibility Act as procedural;[13] however, ALJ Palmer did not conclude that a mere recitation of compliance was all that was required, as GH Dairy contends. Instead, ALJ Palmer explicitly found that the Final Decision and the Final Rule fully complied with the requirements of the Regulatory Flexibility Act, as follows:

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[13] *See Ranchers Cattlemen Action Legal Fund United Stockgrowers of America v. U.S. Dep't of Agric.*, 415 F.3d 1078, 1101 (9th Cir. 2005) (stating the Regulatory Flexibility Act imposes no substantive requirements on an agency; rather, its requirements are purely procedural in nature); *Environmental Defense Ctr., Inc. v. EPA*, 344 F.3d 832, 879 (9th Cir. 2003) (stating, like the notice and comment process required in administrative rulemaking by the Administrative Procedure Act, the analyses required by the Regulatory Flexibility Act are essentially procedural hurdles; after considering the relevant impacts and alternatives, an administrative agency remains free to regulate as it sees fit), *cert. denied,* 541 U.S. 1085 (2004); *U.S. Cellular Corp. v. FCC*, 254 F.3d 78, 88 (D.C. Cir. 2001) (characterizing the Regulatory Flexibility Act requirement that an agency file a final regulatory flexibility analysis as purely procedural requiring only that the agency demonstrate a reasonable good-faith effort to carry out the Regulatory Flexibility Act's mandate).

> The Secretary has fully complied with the RFA. The Notice of Hearing (74 FR 16296, Appendix F) contained an initial RFA analysis. The Final Decision certified that the "... proposed rule will not have a significant economic impact on a substantial number of small entities," and then provided the requisite statement of the factual basis for such certification, as required by 5 U.S.C. § 605(b). The statement was in the form of findings that demonstrated that all essential elements had been considered, and gave a rational explanation of the choices made together with their anticipated effects on various industry members large and small.

ALJ Palmer's Decision at 30. Therefore, I reject GH Dairy's contention that ALJ Palmer erroneously dismissed the Regulatory Flexibility Act as merely requiring a "rote recitation of compliance."

Twelfth, GH Dairy contends ALJ Palmer erroneously concluded that the Final Rule complies with the "only practical means" requirement in 7 U.S.C. § 608c(9)(B). GH Dairy contends the "only practical means" requirement of the AMAA "is a mandate to do an act of analysis; not merely recite a purported justification." (Appeal Pet. at 13, 15-16 ¶ 2f.) The AMAA authorizes the Secretary of Agriculture to issue a federal marketing order notwithstanding the refusal or failure of handlers to sign a marketing agreement on which a hearing has been held upon determining:

> **§ 608c. Orders**
>
> . . . .
>
> **(9) Orders with or without marketing agreement**
>
> . . . .
>
> (A) That the refusal or failure to sign a marketing agreement . . . tends to prevent the effectuation of the declared policy of [the AMAA] with respect to such commodity or product, and
>
> (B) That the issuance of such order is the only practical means of advancing the interests of the producers of such

> commodity [which, in respect to milk, is favored by at least two-thirds of the producers in the specified marketing area].

7 U.S.C. § 608c(9)(A)-(B).

The Final Rule explicitly addressed the "only practical means" requirement in 7 U.S.C. § 608c(9)(B), as follows:

> (c) **Determinations**
>
> It is hereby determined that:
>
> (1) The refusal or failure of handlers . . . of more than 50 percent of the milk, which is marketed within the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the AMAA;
>
> (2) The issuance of this order amending the Northeast and other orders is the only practical means pursuant to the declared policy of the AMAA of advancing the interests of producers as defined in the orders as hereby amended; and
>
> (3) The issuance of this order amending the Northeast and other orders is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the respective marketing areas.

75 Fed. Reg. 21,157, 21,160 (Apr. 23, 2010).

The seminal judicial decision addressing the "only practical means" requirement in 7 U.S.C. § 608c(9)(B) held the determination whether the requirement is satisfied is entrusted to the Secretary of Agriculture's discretion, requires no further factual showing beyond the findings that the order tends to effectuate the purposes of the AMAA, and is not, with limited exceptions, subject to review, as follows:

> The Secretary must make a factual determination after the hearing about the tendency of the order to serve the purposes

> of the Act. In that situation, the Secretary's discretion is limited by his lawful consideration of the evidence that is presented at the "tendency" hearing under 7 U.S.C. § 608c(4). Under 7 U.S.C. § 608c(9)(B), however, the Secretary is directed to determine, without the development of an additional evidentiary record, the necessity of the proposed order. The statute imposes rigorous obligations on the Secretary to develop an evidentiary record with respect to the "tendency" aspect of the order, but leaves him to make a determination of its "necessity" aspect without any further evidence to be taken. The most sensible construction of the statutory scheme, under these circumstances, is that the Secretary's determination for the "necessity" of the order-once the evidentiary "tendency" hearing establishes the Secretary's statutory authorization to issue it–is left to his administrative decision whether or not to issue it as "the only practical means of advancing the interests of the producers ... pursuant to the declared policy (of the Act)", 7 U.S.C. § 608c(9)(B). We are reinforced in our view that this is the proper interpretation of the statutory provisions, because the Act has been so administratively construed and administered (albeit it without issue being raised, until now) since its enactment.

The Court also noted that:

> On oral argument the Court was informed that never in the history of the Act have the handlers voted to approve a marketing arrangement. Thus, the additional finding of necessity has always followed as a matter of course without further hearing or findings. It would alter the established practice of over forty years under the Federal Milk Marketing Act to discover now a separate judicial review of the "necessity" finding of the Secretary. Thus, the logic of the finding of "necessity" being based upon the "tendency" hearing coalesces with the entrenched practice to establish that the "necessity" determination by the Secretary is discretionary administrative action.

Suntex Dairy v. Block, 666 F.2d 158, 164-65 (5th Cir.), *cert. denied*, 459 U.S. 826 (1982).

Therefore, I agree with ALJ Palmer that the explicit determination in the Final Rule that "[t]he issuance of this order amending the Northeast and other orders is the only practical means pursuant to the declared policy of the AMAA of advancing the interests of producers as defined in the orders as hereby amended" (75 Fed. Reg. 21,157, 21,160 (Apr. 23, 2010)) satisfies the "only practical means" requirement in 7 U.S.C. § 608c(9)(B). I reject GH Dairy's contention that the "only practical means" requirement in 7 U.S.C. § 608c(9)(B) requires additional discussion or analysis in the Final Rule.

GH Dairy correctly points out that *Suntex Dairy* is not a "blanket holding of unreviewability" (Appeal Pet. at 16 ¶ 2f). The Fifth Circuit states that a "necessity" determination may be challenged to the extent that: (1) the agency lacked jurisdiction; (2) the agency determination was occasioned by impermissible influence, such as fraud or bribery; or (3) the decision violates a constitutional, statutory, or regulatory command. *Suntex Dairy v. Block*, 666 F.2d 158, 166 (5th Cir.), *cert. denied*, 459 U.S. 826 (1982). GH Dairy challenges the Secretary of Agriculture's authority to issue the Final Rule; however, as discussed in this Decision and Order, *supra*, I reject that challenge.

Findings of Fact

1. Producer-handlers are dairy farmers who produce and handle milk of their own production. Prior to April 2009, each federal milk marketing order had its own definition of the term "producer-handler." Each milk marketing order defined the term so as to exempt milk handled by a producer-handler from the pricing and pooling regulations of the order in slightly different ways. For many years, the various definitions of the term "producer-handler" did not include limits on the size of the producer-handlers exempt from the pooling and pricing regulations of federal milk marketing orders.

2. On February 24, 2006, the Secretary of Agriculture issued a final rule that changed the definition of an exempted producer-handler under the

Arizona-Las Vegas milk marketing order and the Pacific Northwest milk marketing order. The February 24, 2006, final rule limited the exemption from the pooling and pricing regulations of the Arizona-Las Vegas milk marketing order and the Pacific Northwest milk marketing order to producer-handlers that have Class I milk route distribution of 3,000,000 pounds or less per month (71 Fed. Reg. 9430 (Feb. 24, 2006)).

3. On April 11, 2006, Congress enacted the MREA. The MREA's stated intent is to "ensure regulatory equity between and among all dairy farmers and handlers for sales of packaged fluid milk in federally regulated milk marketing areas and into certain non-federally regulated milk marketing areas from federally regulated areas, and for other purposes." The MREA approved the Secretary of Agriculture's determination in the February 24, 2006, final rule that limited the scope of the producer-handler exemption from regulation for those producer-handlers operating within Arizona as regulated by Order No. 131, but rejected such limitation with respect to producer-handlers operating within Nevada. In addition, the MREA instructed that the minimum and uniform requirements of a federal milk marketing order shall apply to "a handler of Class I milk products (including a producer-handler or producer operating as a handler)" within an area regulated by a federal milk marketing order that sells to States not subject to a federal milk marketing order (7 U.S.C. § 608c(5)(M)(ii)). On May 1, 2006, the Secretary of Agriculture issued an order implementing the instructions in the MREA (71 Fed. Reg. 25,495 (May 1, 2006)). The MREA also states:

> **§ 608c. Orders**
>
> . . . .
>
> **(5) Terms—Milk and is products**
>
> In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7) of this section) no others:
>
> . . . .

> (O) RULE OF CONSTRUCTION REGARDING PRODUCER-HANDLERS.—Subparagraphs (M) and (N) shall not be construed as affecting, expanding, or contracting the treatment of producer-handlers under this subsection except as provided in such subparagraphs.

7 U.S.C. § 608c(5)(O).

4. On April 9, 2009, AMS published a Notice of Hearing regarding the need to change the producer-handler definition in all federal milk marketing orders and to increase the exempt plant monthly limit on the disposition of fluid milk products from 150,000 to 450,000 pounds (74 Fed. Reg. 16,296 (Apr. 9, 2009)). The Notice of Hearing was in response to requests from NMPF and IDFA to hold a hearing to address problems in the federal milk marketing order system caused by the exemption of producer-handlers from regulation by federal milk marketing orders.

5. AMS, pursuant to its April 9, 2009, Notice of Hearing, held the formal rulemaking hearing during the period May 4 through May 19, 2009, at which transcribed testimony was taken and multiple exhibits were received regarding the need to limit the size of producer-handlers that are exempted by federal milk marketing orders. Numerous witnesses testified regarding the original industry proposals, as well as 17 alternate proposals on regulating producer-handlers. Jeff Sapp, the principal of a producer-handler, Nature's Dairy, could not travel to the hearing and give his testimony in person. The presiding administrative law judge, Administrative Law Judge Jill S. Clifton, denied a motion to include Mr. Sapp's proffered declaration and supporting exhibits as part of the record evidence because Mr. Sapp was unavailable in person, as required by the Rules of Practice and Procedure Governing Proceedings To Formulate Marketing Agreements and Marketing Orders.

6. After the filing of proposed findings and conclusions by industry members, the issuance of a recommended decision (74 Fed. Reg. 54,384 (Oct. 21, 2009)), and the filing and consideration of exceptions, the Secretary of Agriculture issued the Final Decision (75 Fed. Reg. 10,122 (Mar. 4, 2010)) that was implemented by the Final Rule that became effective June 1, 2010 (75 Fed. Reg. 21,157 (Apr. 23, 2010)). The Final

Rule limited the exemption of producer-handlers from pooling and pricing provisions in all federal milk marketing orders to those with total route disposition and sales of packaged fluid milk products to other plants of 3,000,000 pounds or less during a month.

7. GH Dairy distributes in excess of 3,000,000 pounds of packaged fluid milk products per month (Pet. at 2 ¶ 3). Accordingly, the plant facilities of GH Dairy's integrated operation are regulated, pursuant to the Final Rule, as a fully-regulated distributing plant, and its dairy farm facilities are deemed a "producer" under an applicable federal milk marketing order (Pet. at 5-6 ¶ 21). As a result, GH Dairy is required to pay into the federal milk marketing order's producer equalization fund, the difference between its higher use-value of milk and the monthly blend price that is computed under the order.

Conclusions of Law

1. The Final Decision and the Final Rule are with the authority conferred on the Secretary of Agriculture by the AMAA.

2. The Final Decision and Final Rule are not contrary to binding practices and interpretations by the Secretary of Agriculture, as ratified by Congress.

3. The Final Decision and the Final Rule are supported by substantial record evidence and are not arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

4. The Final Decision and the Final Rule are based on a hearing record that did not exclude critical evidence.

5. The Final Decision and Final Rule did not violate the Regulatory Flexibility Act.

6. The Final Rule meets the AMAA's "only practical means" standard.

7. The Final Rule does not impose a prohibited form of milk pricing.

8. The Final Rule does not create a trade barrier.

For the foregoing reasons, the following Order is issued.

ORDER

1. The Secretary of Agriculture's Final Decision (75 Fed. Reg. 10,122 (Mar. 4, 2010)) and the Secretary of Agriculture's implementing Final Rule (75 Fed. Reg. 21,157 (Apr. 23, 2010)) are in accordance with law; therefore, the Final Decision and Final Rule are not modified and GH Dairy is not exempted from the regulatory effects of the Final Decision and the Final Rule.

2. The relief GH Dairy seeks in the Petition, filed May 19, 2010, is denied.

3. GH Dairy's Petition, filed May 19, 2010, is dismissed.
This Order is effective upon service on GH Dairy.

RIGHT TO JUDICIAL REVIEW

GH Dairy has the right to obtain review of the Order in this Decision and Order in any district court of the United States in which GH Dairy has its principal place of business. GH Dairy must file a bill in equity for the purpose of review of the Order in this Decision and Order within 20 days from the date of entry of the Order in this Decision and Order. Service of process in any such proceeding may be had upon the Secretary of Agriculture by delivering a copy of the bill of complaint to the Secretary of Agriculture.[14]

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[14] 7 U.S.C. § 608c(15)(B).

ADMINISTRATIVE WAGE GARNISHMENT ACT

DEPARTMENTAL DECISIONS

In re: BOBBI J. GAINOR, f/k/a BOBBI JO RALL.
AWG Docket No. 12-0036.
Decision and Order.
Filed February 17, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

1. The hearing by telephone was held as scheduled on January 18, 2012. Ms. Bobbi J. Gainor, formerly known as Bobbi Jo Rall ("Petitioner Gainor"), did not participate. (Petitioner Gainor did not participate by telephone: in response to my Order issued December 14, 2011, Petitioner Gainor provided no telephone number where she could be reached for the hearing by telephone. At the telephone number Ms. Gainor provided in her Hearing Request, no one answered; there was a recording, and we did not receive a return call after leaving a message on the recorder requesting that she call back and giving her the number to call.)

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. Petitioner Gainor owes to USDA Rural Development a balance of **$48,671.82** (as of December 14, 2011) in repayment of a United States Department of Agriculture Farmers Home Administration loan made in 1993, for a home in North Dakota. The balance is now unsecured ("the

debt"). [The loan balance will change, because garnishment is ongoing as to both Petitioner Gainor and her former husband (RX 7, pp. 2, 3); the balance will likely have been reduced by the time I sign this Decision.] *See* USDA Rural Development Exhibits RX 1 through RX 7, plus Narrative, Witness & Exhibit List (filed December 20, 2011), which are admitted into evidence, together with the testimony of Michelle Tanner.

4. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **$48,671.82** would increase the current balance by $13,628.11, to $62,299.93. *See* USDA Rural Development Exhibits, esp. RX 7, p. 4.

5. The amount Petitioner Gainor borrowed (with her then-husband, Curtis J. Rall) in 1993 was $45,500.00. RX 1. By the time the Agency determined that the net recovery value of the property would be negative, and thus the lien was valueless and the Mortgage would be released, on about February 11, 2011, the debt had grown to $49,400.85:

$ 33,660.59 Principal Balance
$ 4,945.91 Interest Balance[1] prior to foreclosure sale
$ 10,794.35 Fee Balance prior to foreclosure sale (includes unpaid real estate taxes, unpaid insurance premiums)

$ 49,400.85 Total Amount Due

RX 7 and USDA Rural Development Narrative.

Collections from Treasury (from not only Petitioner Gainor but also her former husband) of $729.03 applied to the debt leave **$48,671.82** unpaid now (excluding the potential remaining collection fees). *See* RX 7, and USDA Rural Development Narrative.

6. Petitioner Gainor failed to file a Consumer Debtor Financial Statement, or anything, in response to my Order issued December 14, 2011. Thus I cannot calculate Petitioner Gainor's current disposable

[1] USDA Rural Development's Narrative states the interest will be adjusted to a lower amount.

pay. (Disposable pay 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.)

7. There is no evidence before me to use to consider the factors to be considered under 31 C.F.R. § 285.11. In other words, I cannot tell whether garnishment to repay "the debt" (*see* paragraph 3) in the amount of 15% of Petitioner Gainor's disposable pay creates a financial hardship.

8. Petitioner Gainor is responsible and able to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

9. Garnishment of Petitioner Gainor's disposable pay is authorized. I encourage **Petitioner Gainor and Treasury's collection agency** to **negotiate** promptly the repayment of the debt. Petitioner Gainor, this will require **you** to telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Gainor, 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. You may ask that **the debt be apportioned between you and your co-borrower**. Petitioner Gainor, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

11. Petitioner Gainor owes the debt described in paragraphs 3, 4 and 5.

12. When Petitioner Gainor entered into the borrowing transaction with her co-borrower Mr. Curtis J. Rall, certain responsibilities were fixed, as to each of them. [The debt is her co-borrower's and her joint-and-several obligation.] If Petitioner has any recourse against her co-borrower for

reimbursement for amounts she has paid on the debt, she may want to pursue that. USDA Rural Development could collect, legally, the entire unpaid balance of the debt from Petitioner Gainor. [And, likewise, USDA Rural Development could collect, legally, the entire unpaid balance of the debt from Petitioner Gainor's co-borrower.]

13. Garnishment **up to 15% of Petitioner Gainor's disposable pay** is authorized. There is no evidence that financial hardship has been created by the garnishment. 31 C.F.R. § 285.11.

14. **No refund** to Petitioner Gainor of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.

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

ORDER

16. Until the debt is repaid, Petitioner Gainor 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).

17. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with **garnishment up to 15% of Petitioner Gainor's disposable pay**. 31 C.F.R. § 285.11.

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

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

_____

In re: TRICIA TEMPLONUEVO, F/K/A TRICIA L. BOESCHE.
AWG Docket No. 12-0037.
Decision and Order.
Filed January 24, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

1. The hearing by telephone was held as scheduled on January 18, 2012. Tricia Templonuevo, the Petitioner, formerly known as Tricia L. Boesche ("Petitioner Templonuevo"), 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, were filed on December 19, 2011, and are admitted into evidence, together with the testimony of Michelle Tanner.

4. Petitioner Templonuevo's letter dated December 27, 2011, plus completed "Consumer Debtor Financial Statement," plus Exhibits PX 1 through PX 2, were filed on January 9, 2012, and are admitted into evidence, together with the testimony of Petitioner Templonuevo, together with her Hearing Request and all accompanying documents (filed October 26, 2011).

ADMINISTRATIVE WAGE GARNISHMENT ACT

5. Petitioner Templonuevo owes to USDA Rural Development **$41,658.77** (as of December 14, 2011), in repayment of a United States Department of Agriculture / Rural Development / Rural Housing Service ***Guarantee*** (*see* RX 3, esp. p. 2) for a loan made in 2005, the balance of which is now unsecured ("the debt"). Petitioner Templonuevo borrowed, together with Chad C. Hiltner, to buy a home in Minnesota. [The loan balance will change, because garnishment is ongoing; the balance will likely have been reduced by the time I sign this Decision.]

6. The ***Guarantee*** (RX 3) establishes an **independent** obligation of Petitioner Templonuevo, "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 3, p. 2.

7. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **$41,658.77**, would increase the balance by $11,664.46, to $53,323.23. *See* USDA Rural Development Exhibits, esp. RX 11.

8. Petitioner Templonuevo works as a front desk supervisor 40 hours per week, making $17.50 per hour. Petitioner Templonuevo's $184.00 health insurance premium is deducted every two weeks. Her disposable pay (within the meaning of 31 C.F.R. § 285.11) is difficult to calculate without pay stubs. [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.]

9. Although garnishment (presumably at 15% of Petitioner Templonuevo's disposable pay), has been ongoing (RX 11, p. 2), Petitioner Templonuevo has undergone financial hardship as a result. Petitioner Templonuevo, together with her husband, has two children to support (her child who is 7 years old and her child who is less than a year

old), in addition to herself. Her husband has his own debt, including back taxes (he is paying roughly $255.00 per month on an $81,000.00 balance) for a restaurant he owned, and he is not responsible to pay "the debt" (*see* paragraph 5) that is the subject of the hearing. Their living expenses are reasonable, and they have had some help from parents to have their motor vehicles. The hospital and clinic bills from the birth of her youngest child are a heavy burden (Petitioner Templonuevo's health insurance has a $4,200.00 deductible), but the bulk of the hospital and clinic bills may be fully paid within this year. Petitioner Templonuevo has day care expenses, estimated at $300.00 per month. She and her husband have credit card payments of about $375.00 per month, not counting future purchases.

10. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **0%** of Petitioner Templonuevo's disposable pay through February 2013; then **up to 7%** of Petitioner Templonuevo's disposable pay beginning March 2013 through February 2015; then **up to 15%** of Petitioner Templonuevo's disposable pay thereafter. 31 C.F.R. § 285.11.

11. Petitioner Templonuevo is responsible and willing and able to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

12. Through February 2013, no garnishment is authorized. Beginning March 2013 through February 2015, garnishment up to 7% of Petitioner Templonuevo's disposable pay is authorized; and thereafter, garnishment up to 15% of Petitioner Templonuevo's disposable pay is authorized. *See* paragraphs 8, 9 and 10. I encourage **Petitioner Templonuevo and the collection agency** to **negotiate** the repayment of the debt. Petitioner Templonuevo, 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 Templonuevo, 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. You may ask that **the debt be apportioned between you and your co-borrower**. Petitioner

Templonuevo, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

14. Petitioner Templonuevo owes the debt described in paragraphs 5, 6 and 7.

15. When Petitioner Templonuevo entered into the borrowing transaction with her co-borrower Mr. Chad C. Hiltner, certain responsibilities were fixed, as to each of them. [The debt is her co-borrower's and her joint-and-several obligation.] If Petitioner has any recourse against her co-borrower for reimbursement for amounts she has paid on the debt, she may want to pursue that. USDA Rural Development could collect, legally, the entire unpaid balance of the debt from Petitioner Templonuevo. [And, likewise, USDA Rural Development could collect, legally, the entire unpaid balance of the debt from Petitioner Templonuevo's co-borrower.]

16. **Garnishment is authorized**, as follows: through February 2013, **no** garnishment. Beginning March 2013 through February 2015, garnishment **up to 7%** of Petitioner Templonuevo's disposable pay; and thereafter, garnishment **up to 15%** of Petitioner Templonuevo's disposable pay. 31 C.F.R. § 285.11.

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

18. Repayment of the debt may occur through ***offset*** of Petitioner Templonuevo's **income tax refunds** or other **Federal monies** payable to the order of Mrs. Templonuevo (whether or not garnishment is authorized).

ORDER

19. Until the debt is repaid, Petitioner Templonuevo 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).

20. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment through February 2013. Beginning March 2013 through February 2015, garnishment **up to 7%** of Petitioner Templonuevo's disposable pay is authorized; and garnishment **up to 15%** of Petitioner Templonuevo'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.

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In re: TINA M. QUESTEL.
Docket No. 12-0046.
Decision and Order.
Filed January 24, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

1. The hearing by telephone was held as scheduled on January 19, 2012. Ms. Tina M. Questel, full name Tina Marie Questel ("Petitioner Questel"), did not participate. (Petitioner Questel did not participate by telephone: there was no telephone number for Ms. Questel provided in her Hearing Request; and in response to my Order issued December 14, 2011,

Petitioner Questel provided no telephone number where she could be reached for the hearing by telephone.)

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. Petitioner Questel owes to USDA Rural Development a balance of **$53,452.44** (as of December 10, 2011) in repayment of a United States Department of Agriculture Farmers Home Administration loan made in 1994, for a home in Texas. The balance is now unsecured ("the debt"). [The loan balance will change, because garnishment is ongoing (RX 6, p. 3); the balance will likely have been reduced by the time I sign this Decision.] *See* USDA Rural Development Exhibits RX 1 through RX 6, plus Narrative, Witness & Exhibit List (filed December 28, 2011), which are admitted into evidence, together with the testimony of Michelle Tanner.

4. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **$53,452.44** would increase the current balance by $16,035.73, to $69,488.17. *See* USDA Rural Development Exhibits, esp. RX 6, p. 4.

5. The amount Petitioner Questel borrowed in 1994 was $56,970.00. RX 1. By the time the foreclosure sale was held (post-bankruptcy) on December 2, 2008, and $45,050.00 was received on December 12, 2008 and applied to the debt, and costs and fees applied, the debt had grown to $58,531.56:

$ 58,021.56 Unpaid Principal Balance prior to foreclosure sale
$ 24,224.26 Unpaid Interest Balance prior to foreclosure sale
$ 21,335.74 Recoverable costs and fees (fees includes unpaid real estate taxes, unpaid insurance premiums), interest on fees, and other items, pre-sale and post-sale)

$103,581.56
- 45,050.00 Received from the foreclosure sale

$ 58,531.56 Total Amount Due
=========

RX 6, p. 2, and USDA Rural Development Narrative.

Collections from Treasury (from Petitioner Questel, through ***offset*** and garnishment) and a refund applied to the debt leave **$53,452.44** unpaid as of December 10, 2011 (excluding the potential remaining collection fees). *See* RX 6, pp. 2 and 3, and USDA Rural Development Narrative.

6. Petitioner Questel failed to file a Consumer Debtor Financial Statement, or anything, in response to my Order issued December 14, 2011. Thus I cannot calculate Petitioner Questel's current disposable pay. (Disposable pay 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.)

7. There is no evidence before me to use to consider the factors to be considered under 31 C.F.R. § 285.11. In other words, I cannot tell whether garnishment to repay "the debt" (*see* paragraph 3) in the amount of 15% of Petitioner Questel's disposable pay creates a financial hardship.

8. Petitioner Questel is responsible and able to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

9. Garnishment of Petitioner Questel's disposable pay is authorized. I encourage **Petitioner Questel and Treasury's collection agency** to **negotiate promptly** the repayment of the debt. Petitioner Questel, this will require **you** to telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Questel, 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 Questel, you may want to have someone else with you on the line if you call.

ADMINISTRATIVE WAGE GARNISHMENT ACT

Findings, Analysis and Conclusions

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

11. Petitioner Questel owes the debt described in paragraphs 3, 4 and 5.

12. During Petitioner Questel's Chapter 13 bankruptcy (2001-2004), she may have complied with the plan to pay the past due amounts on the debt, but she failed to keep current. Thus a new Notice of Acceleration was sent to her on April 26, 2005. RX 4.

13. **Garnishment up to 15% of Petitioner Questel's disposable pay** is authorized. There is no evidence that financial hardship has been created by the garnishment. 31 C.F.R. § 285.11.

14. **No refund** to Petitioner Questel of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.

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

ORDER

16. Until the debt is repaid, Petitioner Questel 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).

17. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with **garnishment up to 15% of Petitioner Questel's disposable pay**. 31 C.F.R. § 285.11.

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

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

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In re: CHERRI JONES.
Docket No. 12-0049.
Decision and Order.
Filed January 25, 2012.

AWG.

Cherri Jones, pro se.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

1. The hearing by telephone was held as scheduled on January 19, 2012. Cherri Jones, the Petitioner, also known as Cherri N. Jones ("Petitioner Jones"), 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 9, plus Narrative, Witness & Exhibit List, were filed on December 20, 2011, and are admitted into evidence, together with the testimony of Michelle Tanner.

4. Petitioner Jones' letter dated January 11, 2012, plus completed "Consumer Debtor Financial Statement," were filed on January 20, 2012, and are admitted into evidence, together with the testimony of Petitioner Jones, together with her Hearing Request and all accompanying documents (filed November 4, 2011).

5. Petitioner Jones owes to USDA Rural Development **$11,946.17** (as of December 17, 2011), 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 2006, the balance of which is now unsecured ("the debt"). Petitioner Jones borrowed, together with her then husband, William M. Jones, to buy a home in Alabama. [The loan balance has changed, because garnishment is ongoing; the balance has been reduced.]

6. The ***Guarantee*** (RX 3) establishes an **independent** obligation of Petitioner Jones, "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. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **$11,946.17**, would increase the balance by $3,583.85, to $15,530.02. *See* USDA Rural Development Exhibits, esp. RX 9, p. 5.

8. Petitioner Jones asks that she and her co-borrower be required to pay equal amounts of the amount that was owed when they divorced in 2009, because they incurred this liability as a married couple. The amount was $29,974.62. RX 8; RX 9; RX 6, p. 9. Petitioner Jones testified that they did not know about the debt at the time of their divorce and thus the debt was not addressed in their divorce decree. *See also* Petitioner Jones' letter dated January 11, 2012. Petitioner Jones' request makes good sense; perhaps she and her co-borrower will be able to agree between

themselves to such a division of the debt.[1] If Petitioner Jones has any recourse against her co-borrower for reimbursement for amounts she has paid on the debt, she may want to pursue that. But USDA Rural Development, and those collecting on its behalf, are not limited to taking only half the debt repayment from each of them. Rather, USDA Rural Development could collect, legally, the entire unpaid balance of the debt from Petitioner Jones. [And, likewise, USDA Rural Development could collect, legally, the entire unpaid balance of the debt from Petitioner Jones' co-borrower.]

9. Petitioner Jones has repaid substantial amounts of the debt through ***offset*** of her federal income tax refunds (RX 9, p. 2). Petitioner Jones works as an LPN. Her disposable pay (within the meaning of 31 C.F.R. § 285.11) is difficult to calculate without pay stubs. [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.] Petitioner Jones, a single mother with two children to support (a 10 year old and a 5 year old), testified that she is living paycheck to paycheck. Petitioner Jones' Consumer Debtor Financial Statement filed January 20, 2012 shows that her living expenses are reasonable, and that her living expenses probably exceed her disposable pay. In addition to those living expenses, Petitioner Jones has student loan payments of about $400.00 per month (one student loan is $21,545.00; the other student loan is $14,000.00). Also in addition to those living expenses, she pays about $128.00 per month on substantial credit card balances, not counting future purchases. Garnishment (at 15% of Petitioner Jones' disposable pay or in any amount), would clearly cause Petitioner Jones financial hardship.

10. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **0%** of Petitioner Jones' disposable pay through February 2015; then **up to 3%** of Petitioner Jones' disposable pay

[1] The costs of collection (see paragraph 7) complicate the calculation. The amounts paid by Petitioner Jones were paid under the Treasury Offset Program when her federal income tax refunds were **offset** and the collection fees were very small in proportion to the amount applied on the debt. This is in contrast to garnishments, when the collection fees have been comparatively substantial in proportion to the amount applied on the debt.

beginning March 2015 through February 2018; then **up to 5%** of Petitioner Jones' disposable pay thereafter. 31 C.F.R. § 285.11.

11. Petitioner Jones is responsible and willing and able to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

12. Through February 2015, no garnishment is authorized. Beginning March 2015 through February 2018, garnishment up to 3% of Petitioner Jones' disposable pay is authorized; and thereafter, garnishment up to 5% of Petitioner Jones' disposable pay is authorized. *See* paragraphs 8, 9 and 10. I encourage **Petitioner Jones and the collection agency** to **negotiate** the repayment of the debt. Petitioner Jones, 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 Jones, 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. You may ask that **the debt be apportioned between you and your co-borrower**. Petitioner Jones, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

14. Petitioner Jones owes the debt described in paragraphs 5, 6 and 7.

15. As of February 18, 2011, Petitioner Jones had repaid significantly more than her co-borrower. When Petitioner Jones entered into the borrowing transaction with her co-borrower, her then husband Mr. William M. Jones, certain responsibilities were fixed, as to each of them, such that each of them owes the entire debt, and USDA Rural Development, and those collecting on its behalf, are not restricted to collecting equal amounts from each of them. [The debt is her co-borrower's and her joint-and-several obligation.] *See* paragraph 8.

16. **Garnishment is authorized**, as follows: through February 2015, **no** garnishment. Beginning March 2015 through February 2018, garnishment **up to 3%** of Petitioner Jones' disposable pay; and thereafter, garnishment **up to 5%** of Petitioner Jones' disposable pay. 31 C.F.R. § 285.11.

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

18. Repayment of the debt may occur through ***offset*** of Petitioner Jones' **income tax refunds** or other **Federal monies** payable to the order of Mrs. Jones (whether or not garnishment is authorized).

ORDER

19. Until the debt is repaid, Petitioner Jones 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).

20. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment through February 2015. Beginning March 2015 through February 2018, garnishment **up to 3%** of Petitioner Jones' disposable pay is authorized; and garnishment **up to 5%** of Petitioner Jones' 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.

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In re: TINA D. HENLEY, f/k/a TINA JONES.
AWG Docket No. 12-0068.
Decision and Order.
Filed January 27, 2012.

AWG.

ADMINISTRATIVE WAGE GARNISHMENT ACT

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On December 23, 2011, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-10 on December 27, 2011. The Petitioner filed her 7 page financial statement (not including her expenses) on January 12, 2012 (which I now label as PX-1.). Petitioner has been employed at her current job for about one month. Her previous employment had a duration of only two to three months. Petitioner is the sole income earner and is the head of household, including her 15 year old daughter and her grandmother. It is unclear whether there is a Family law court child support order.

On January 24, 2012, at the time set for the hearing, both parties were available for the hearing. Ms. Tanner of RD was representing RD and was present for the telephone conference. Ms. Henley was available and represented herself. The parties were sworn.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On March 28, 1988, Petitioner obtained a loan for the purchase of a primary home mortgage loan in the amount of $63,900.00 from Farmers Home Administration (FmHA), United States Department of Agriculture

(USDA), now Rural Development (RD) to purchase her home on a property located in 1## E. At****** Avenue, Cape May Court House, NJ 082##[1]. RX-1.

2. The Borrower became delinquent. After a failed Chapter 13 Plan filed on/about July 28, 1997, Borrower again became delinquent on her account. RX-3, RX-4.

3. The loan was accelerated for foreclosure on September 3, 1999.

4. A short sale was held on November 10, 2000. RX-7.

5. RD received net $66,878.06 from the short sale. Narrative. RX-7.

6. The principal loan balance for the RD loan prior to the foreclosure was $72,116.81, plus $15,628.03 for accrued interest, plus $12,715.61 for fees and protective costs for a total of $100,460.45. Narrative, RX-10.

7. After the sale proceeds were applied, borrowed owed $33,582.39. Narrative, RX-10.

8. Treasury has collected $9,279.09 as a result of its offset program.

9. The remaining unpaid debt is in the amount of $28,334.89 - exclusive of potential Treasury fees. RX-10.

10. The remaining potential fees from Treasury are $6,804.92. RX-10 @ p. 3 of 3.

11. Ms. Tenley states that has been employed at her present job for one month. PX-1.

12. She is the custodial parent of one minor child and caretaker of her grandmother. There is no evidence of court ordered child support.

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[1] The complete address is maintained in USDA files.

ADMINISTRATIVE WAGE GARNISHMENT ACT

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $28,334.89 exclusive of potential Treasury fees for the mortgage loan extended to her.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $6,804.22.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is **not** entitled to administratively garnish the wages of the Petitioner at this time.

ORDER

1. For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After February, 2013, RD may re-assess the Petitioner's financial position.

2. Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: DOREEN JENSEN.
Docket No. 11-0127.
Decision and Order.
Filed February 2, 2012.

AWG.

Petitioner, pro se.
Michell Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Doreen Jensen ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development ("USDA-RD"; "Respondent"), and if established, the propriety of imposing administrative wage garnishment.

I. Procedural History

On August 6, 2010, Petitioner requested a hearing pursuant to a notice of intent to garnish her wages. Her request for a hearing was deemed untimely filed, and her wages were garnished. Petitioner's request was not forwarded to OALJ until January 11, 2011. By Order issued on February 10, 2011, a hearing was scheduled and deadlines for the submission of evidence were established. The parties timely filed evidence, hereby identified as PX-1 (Petitioner's consumer debtor financial statement dated December 12, 2010) and RX-1 through RX-9 (Respondent's narrative and supporting documents). On September 28, 2011, Petitioner filed a second, undated consumer debtor financial statement, identified as PX-2.

The hearing was continued at the request of Petitioner's counsel, and was rescheduled and continued several times thereafter. Finally, on September 29, 2011, I held a telephone hearing which was attended by Petitioner and her counsel and the representative for Respondent USDA-RD, Mary Kimball. Upon Petitioner's motion regarding the sufficiency of the evidence, I directed USDA-RD to file additional documentation regarding Petitioner's accounts with the agency. I continued the hearing, and memorialized my instructions in an Order issued October 3, 2011.

On October 14, 2011, USDA-RD filed additional documents, identified as RX-10 through RX-13, which included a copy of Petitioner's USDA-RD accounts, documents related to the foreclosure sale of what was Petitioner's home, and a copy of her account with Treasury. Subsequently, the hearing was scheduled to reconvene on January 11, 2012.

On January 11, 2012, I resumed the telephone hearing with the parties. Michelle Tanner represented USDA-RD and Petitioner attended with her counsel. Ms. Tanner and Petitioner testified. I made findings of fact and conclusions of law that are discussed in detail herein, below. Petitioner's counsel again raised questions regarding the completeness of the evidence. There was no evidence of transactions for the year 2005 in Petitioner's statement of account. Accordingly, I held the record open pending the filing of those account records, and any further objection from Petitioner.

On January 17, 2012, USDA-RD filed the missing documents. Petitioner has not filed an objection. The record is now CLOSED

II. Findings of Fact

Based upon all of the evidence of record, the following Findings of Fact shall be entered:

1. On October 31, 1990, the Petitioner assumed an existing loan from USDA in the amount of $19,920.26 (Loan 1) for the purchase of real property located in Chestertown, MD, which was evidenced by an Assumption Agreement executed on that date. RX-1.

2. On October 31, 1990, Petitioner also obtained directly from USDA a loan for the purchase of the same real property in the amount of $55,100.00 (Loan 2), which was evidenced by a Promissory Note and Real Estate Mortgage. RX-2 and RX-3.

3. USDA-RD established two separate accounts for these loans. RX-4.

4. On April 28, 1992, Petitioner reamortized the accounts, which had become delinquent, and which resulted in new principal amounts due of $20,953.00 (Loan 1) and $57,824.80 (Loan 2). RX-5.

5. The accounts became delinquent again, and on October 27, 1997, USDA sent Petitioner a notice of acceleration. RX-6.

6. On May 18, 1998, the property was sold at a foreclosure sale which yielded $65,558.00 that was applied against the balance due on the

combined accounts of $85,956.31, consisting of principal, interest, and fees. RX-13.

7. The balance on Loan 1 after sale proceeds were applied was $351.35 and the balance on Loan 2 after sale proceeds were applied was $20,197.42. RX-13.

8. When the unpaid balances on Petitioner's accounts were not satisfied, the accounts were referred to Treasury within the statutory period. RX 7.
9. Treasury collected funds from Petitioner in the form of tax refund offsets and wage garnishments, and the amount remaining for collection at Treasury is $17,334.84, plus potential fees of $4,853.75. RX 7; RX 10.

10. Petitioner's request for a hearing was timely filed, but was treated as untimely filed, thereby triggering the garnishment of her wages during the period from August, 2010 through March, 2011. RX 13.

11. Petitioner's account was charged with undocumented costs related to the foreclosure sale of the real property securing the loans. RX-12.

12. Petitioner's most recent consumer debtor financial statement demonstrates through a comparison of her income and expenses that Petitioner could withstand wage garnishment, but not at the statutory and regulatory limit. PX 2.

III. Conclusions of Law

Based upon all of the evidence of record, the following Conclusions of Law and Order shall be entered:

1. The Secretary has jurisdiction in this matter.

2. USDA-RD established that the Petitioner is indebted to USDA RD for the balance due on loans she acquired to purchase real property.

3. The amount of the indebtedness due to be collected at Treasury is $17,334.84, exclusive of potential Treasury fees.

4. Although I credit the testimony that Petitioner's account was charged for "recoverable costs" related to the foreclosure sale of the property, USDA-RD was unable to document to whom certain payments were made, and accordingly, Petitioner's account must be credited with those undocumented payments in the amounts of $150.96; $693.00; $222.00; $356.40; and $118.00. See, RX 12.

5. Because I deem Petitioner to have timely requested a hearing in August, 2010, she was improperly subjected to garnishment of her wages.

6. Petitioner is entitled to a refund of all of the amounts that were improperly applied to her account through wage garnishment during the period from August, 2010 through March, 2011.

7. Petitioner was cautioned that a refund would increase the amount of her indebtedness subject to collection.

8. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

9. Petitioner's wages are subject to garnishment.

10. Respondent is entitled to administratively garnish the wages of the Petitioner, but not at the maximum amount.

11. Petitioner's income and expenses demonstrate that 10% of her wages would be subject to wage garnishment.

12. Petitioner may have three months from the date of this Decision and Order to attempt to negotiate with Treasury's agents a payment plan or settlement of the indebtedness.

13. Treasury shall remain authorized to undertake any and all other appropriate collection action.

VI. ORDER

Petitioner's account at Treasury is entitled to credit for costs that were not adequately documented by USDA-RD, in the amounts cited infra., supra.

Petitioner is entitled to a refund for all amounts collected through wage garnishment during the period from August, 2010 through March, 2011. For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment in the amount of 10%, beginning no sooner than May 3, 2012.

Petitioner is advised that if she acquires the ability to negotiate a lump sum payment, she may be able to enter into a compromise settlement of the debt with the representatives of Treasury. Petitioner is further advised that such an agreement may lower anticipated fees for collecting the debt. In addition, Petitioner may inquire about whether she may enter into an arrangement to make installment payments to Treasury in lieu of garnishment. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk's Office.

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ADMINISTRATIVE WAGE GARNISHMENT ACT

In re: JOHN COSTA a/k/a JOHN COSTA III.
Docket No. 12-0077.
Decision and Order.
Filed February 13, 2012.

AWG.

John Costa, pro se.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

1. The hearing by telephone was held as scheduled on January 31, 2012. John Costa, also known as John Costa III ("Petitioner Costa"), did not participate. (Petitioner Costa did not participate by telephone: there was no telephone number for Petitioner Costa provided in his Hearing Request; and in response to my Order issued December 23, 2011, Petitioner Costa provided no telephone number where he could be reached for the hearing by telephone.)

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. Petitioner Costa owes to USDA Rural Development a balance of **$40,304.02** (as of December 16, 2011) 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 on August 12, 2004, by Citizens First National Bank for a home in Illinois, the balance of which is now unsecured ("the debt"). [The loan balance will change, because garnishment is ongoing (RX 9, p. 2); the balance will likely have been reduced by the time I sign this Decision.] *See* USDA Rural Development Exhibits RX 1 through RX 9, plus Narrative, Witness & Exhibit List (filed December 29, 2011), which are admitted into evidence, together with the testimony of Michelle Tanner.

4. This ***Guarantee*** establishes an **independent** obligation of Petitioner Costa, "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.

5. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **$40,304.02** would increase the current balance by $11,285.13, to $51,589.15. *See* USDA Rural Development Exhibits, esp. RX 9, p. 3.

6. The amount Petitioner Costa borrowed was $87,000.00 on August 12, 2004. RX 2. Foreclosure was initiated in 2009. A foreclosure sale was scheduled and held on October 16, 2009 at the La Salle County Courthouse. Citizens First National Bank acquired the property back into inventory for the bid amount of $60,000.00. Citizens First National Bank placed the home "as is" on the market for resale. The Suggested List Price per the Brokers Price Opinion (BPO) was $37,000.00. The property sold to a third party for the amount of $35,500.00 on March 15, 2010. After $5,482.45 of foreclosure costs was subtracted, the net proceeds from sale of the home, available to apply on the loan, were $30,017.55.

7. Mr. Costa stated in his Hearing Request: "I believe my home was taken wrongfully and when sold was within 30 days of myself moving out." But Mr. Costa owed $90,725.13 on the loan with Citizens First National Bank. The detail is shown on RX 9, p. 1. In addition to principal ($82,185.88), there was interest ($6,287.22), and there were fees and protective advances ($2,252.03). These three items total $90,725.13. RX 9, p. 1 and USDA Rural Development Narrative. So when the $30,017.55 proceeds from sale of the home were applied on the loan, there was still a balance of $60,707.58. A credit ($720.00) was

applied, reducing Citizens First National Bank's loss to $59,987.58. RX 9, p. 1.

8. USDA Rural Development paid Citizens First National Bank $55,556.94 for its loss on October 28, 2010. RX 7, p. 5, and USDA Rural Development Narrative. Thus $55,556.94, the amount USDA Rural Development paid, is the amount USDA Rural Development recovers from Petitioner Costa under the ***Guarantee***.

9. Collections from Treasury applied on the debt after collection fees are subtracted ($15,252.92), from Petitioner Costa, including ***offset*** and garnishment) leave **$40,304.02** unpaid as of December 16, 2011 (excluding the potential remaining collection fees). *See* RX 9, pp.1-2, and USDA Rural Development Narrative.

10. Although my Order dated December 23, 2011, required financial disclosure from Petitioner Costa, such as filing a Consumer Debtor Financial Statement, he filed nothing. Thus I cannot calculate Petitioner Costa's current disposable pay. (Disposable pay 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.) There is no evidence before me to use to consider the factors to be considered under 31 C.F.R. § 285.11. In other words, I cannot tell whether garnishment to repay "the debt" (*see* paragraph 3) in the amount of 15% of Petitioner Costa's disposable pay creates a financial hardship.

11. Petitioner Costa is responsible and able to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

12. Garnishment of Petitioner Costa's disposable pay is authorized. I encourage **Petitioner Costa and Treasury's collection agency** to **negotiate promptly** the repayment of the debt. Petitioner Costa, this will require **you** to telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Costa, 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 Costa, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

14. Petitioner Costa owes the debt described in paragraphs 3 through 9.

15. **Garnishment up to 15% of Petitioner Costa's disposable pay** is authorized. There is no evidence that financial hardship has been created by the garnishment. 31 C.F.R. § 285.11.

16. **No refund** to Petitioner Costa of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.

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

ORDER

18. Until the debt is repaid, Petitioner Costa 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).

19. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with **garnishment up to 15% of Petitioner Costa's disposable pay**. 31 C.F.R. § 285.11.

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

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

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In re: SHANNA C. CANNON.
Docket No. 12-0118.
Decision and Order.
Filed February 13, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On January 6, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-5 on January 18, 2012. The Petitioner filed 36 pages with her original request for hearing - including documents relating to her prior divorce and a hand written narrative (which I now label as PX-1). Petitioner then filed a four page financial statement on January 30, 2012. Petitioner has been employed at her current job for about nine months following an involuntary period of unemployment. Petitioner is the sole income earner and pays child support to her ex-husband to care for their 13 year old son in his custody . On February 8, 2012, at the time set for the hearing, both parties were available via phone. Ms. Tanner representing RD and was present for the telephone

conference. Ms. Cannon was available and represented herself. The parties were sworn.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On December 22, 1999, Petitioner and her ex-husband obtained a loan for the purchase of a primary home mortgage loan in the amount of $75,900.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase her home on a property located in 1## Vander***** Dr., Covington, TN 380##[1]. RX-1.

2. The Borrowers became delinquent and the loan was accelerated for foreclosure on September 23, 2003. RX-2.

3. At the foreclosure sale on August 20, 2004, the property was sold to a third party for $53,000. Narrative, RX-3 @ p. 14 of 32, RX-4.

4. The principal loan balance for the RD loan prior to the foreclosure was $73,133.25, plus $6,738.25 for accrued interest, plus $1,449.33 for recoverable costs and late charges of $27.00 for a total of $81,347.83. Narrative, RX-4.

5. After the sale proceeds were applied, borrower owed $28,648.43. Narrative, RX-4.

6. Both parties agree that Todd Cannon filed Chapter 7 bankruptcy.

7. Treasury has collected $6,828.00 as a result of its off-set program. RX-4.

8. The remaining unpaid debt is $21,820.43 - exclusive of potential Treasury fees. RX-4.

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[1] The complete address is maintained in USDA files.

9. The remaining potential fees from Treasury are $6,109.72. RX-5 @ p. 2 of 3.

10. Ms. Cannon states that has been employed at her present job for nine months after a period of involuntary lay-off. PX-1.

11. She is the non-custodial parent of one minor child. There is court ordered child support in her favor; however the parties have voluntarily reversed the custody and support arrangements of the minor child.

12. Petitioner alleged a financial hardship. A Financial Hardship calculation was prepared[2]. It is not binding on the parties since under the regulations; RD is not able to garnish wages until a after full year of employment.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $21,820.43 exclusive of potential Treasury fees for the mortgage loan extended to her.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $6,109.72.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is **not** entitled to administratively garnish the wages of the Petitioner at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After May 2012, RD may re-assess the Petitioner's financial position.

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[2] The Financial hardship calculation will not be posted on the OALJ website.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: MATTHEW M. EARL.
Docket No. 12-0047.
Decision and Order.
Filed February 17, 2012.

AWG.

Mark T. Hamby, Esq. for Petitioner.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

1. The hearing by telephone was held on January 19, 2012. Matthew M. Earl, the Petitioner ("Petitioner Earl"), participated, represented by Mark T. Hamby, Esq.

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. Petitioner Earl's Exhibits PX 1 through PX 4, plus completed "Consumer Debtor Financial Statement," plus Narrative, Witness & Exhibit List, were filed on January 17, 2012, and are admitted into evidence, together with the testimony of Petitioner Earl, together with his Hearing Request and all accompanying documents (filed November 4, 2011). Also admitted into evidence are Petitioner Earl's documents filed post-hearing on January 26, 2012: Exhibit PX 5 with attached 4 pages of payroll records from Petitioner Earl's employer, plus Mark Hamby's cover letter.

4. USDA Rural Development's Exhibits RX 1 through RX 15, plus Narrative, Witness & Exhibit List, were filed on December 20, 2011, and are admitted into evidence, together with the testimony of Michelle Tanner. Also admitted into evidence are USDA Rural Development's exhibits filed post-hearing on January 26, 2012: Exhibits RX 16 through RX 20, plus Michelle Tanner's Exhibit List.

5. Petitioner Earl borrowed to buy a home in Oklahoma. Petitioner Earl bought the home in Oklahoma in 2006, and borrowed $73,979.00 to pay for it. RX 3.

6. USDA Rural Development's position is that Petitioner Earl owes to USDA Rural Development **$32,979.14** (as of January 24, 2012), 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 2006 ("the debt"). The loan was made by Rooms and Clark Mortgage Corp. and went to American Southwest Mortgage Corp. and to Chase Manhattan Mortgage; the ***Guarantee*** remained in force. After careful review of all of the evidence, I agree with USDA Rural Development's position. [The loan balance has no doubt changed from the January 24, 2012 balance of $32,979.14 (excluding collection costs), because garnishment is ongoing (*see* RX 15, p. 1; and RX 20, p. 1); the balance will have therefore been reduced and will continue to change. As will be seen later in this Decision, the balance will increase when amounts taken from Petitioner Earl's pay are returned to him.]

7. The ***Guarantee*** (RX 3) establishes an **independent** obligation of Petitioner Earl, "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. The Due Date of the last payment made was April 1, 2008. RX 8, p. 2. The foreclosure was initiated on September 26, 2008. RX 8, p. 2. The lender, Chase, acquired the home, which became REO (Real Estate Owned), at the Sheriff's sale on July 7, 2009. Chase (Chase Home Finance LLC) bid $51,000.00, which, according to the language of the District Court Judge in his Order Confirming Sheriff's Sale, was "two-thirds (2/3rds) or more of the appraised value of said property [the appraisal relied upon came in at $72,100.00 (PX 2, PX 3)]. The Court finds that said sale was, in all respects, made in conformity with the statutes of the State of Oklahoma in such cases made and provided." PX 3.

9. USDA Rural Development reimbursed the lender $35,167.19 on April 21, 2010, which is the amount USDA Rural Development seeks to recover from Petitioner Earl under the ***Guarantee***. RX 14. There are a number of appraisals, and Petitioner Earl requests evaluation of them.

10. Evaluating appraisals is a bit of an art. I begin with the appraisal as of August 13, 2009. This appraisal is at RX 17. The foreclosure sale had taken place about a month and a week earlier (July 7, 2009). There are 3 values referenced in this appraisal (RX 17); two are sales comparison approaches, one "AS REPAIRED" and one "AS IS"; and the third is a cost approach:

> (a) By cost approach, the home's value was $78,661.00. When rapid resale is the objective, the cost approach is not the method chosen. The appraisal stated, "Market approach is felt most indicative of actual buyer & seller reactions in the market."
> (b) By sales comparison approach, IF $7,800.00 of needed repairs were done, the "AS REPAIRED" value was $58,050.00 or $58,000.00.
> (c) By sales comparison approach, the "AS IS" value was $58,000.00 minus $7,800.00 equals $50,200.00.

Next, I focus on the Broker Price Opinion (BPO), dated August 21, 2009. This appraisal is at RX 18, pp. 2-5. This appraisal shows a 3 to 6 month sales price range from $76,000.00 (high) to $65,000.00 (low). RX

18, p. 2. This Opinion recommends $550.00 in repairs (RX 18, p. 3) and recommends $70,000.00 as the List Price, after concluding that $70,000.00 was the 90-120 day Repair Price. This Opinion shows $65,000.00 as the 90-120 day As-Is Price.

The calculations made by USDA Rural Development are shown on the Property Disposition Plan Worksheet, dated August 26, 2009. RX 18, p. 1. Both of the foregoing appraisals are included in the Property Value Summary of the Worksheet. RX 18, p. 1. The Marketing Strategy selected is "As-is"; the Suggested List Price is $65,000.00; the Minimum Acceptable Price is $55,250.00.

11. What happened then is, the home did not sell. RX 8, p. 2. The Original List Date was August 28, 2009; the Original List Price was $68,000.00. RX 8, p. 2. The Final List Date was January 27, 2010; the Final List Price was $58,400.00. RX 8, p. 2. The Marketing Period Expiration was January 24, 2010. RX 8, p. 2. USDA Rural Development then obtained the Appraisal found at RX-16. The appraisal shows the home's market value to be $50,000.00 as of February 21, 2010, based on a Sales Comparison Approach. RX 16, p. 4. [The Cost Approach shows a $90,272.00 value; again, when rapid resale is the objective, the cost approach is not the method chosen.] Thus, the $50,000.00 RHS Liquidation Appraised Value and the February 21, 2010 RHS Liquidation Appraised Date are shown on RX 8, p. 2.

12. Under these circumstances, I find the $50,000.00 Liquidation Value to be reasonable. Paragraphs 8-11. As Michelle Tanner testified, there are costs associated with keeping a property on the market. But, happily, the home did sell for a price higher than the $50,000.00 liquidation value, and Petitioner Earl was given credit for that. *See* next paragraph, and *see* RX 19.

13. Originally, USDA Rural Development used the $50,000.00 Liquidation Value of the Home. *See* RX 9, and RX 8. Using the $50,000.00 Liquidation Value, USDA Rural Development expected to pay to Chase Home Finance LLC $39,561.69. RX 9. Instead, the loss claim amount was $35,167.19, paid by USDA Rural Development to the lender on April 21, 2010 (RX 14). RX 14, p. 2.

14. The following summary of USDA Rural Development's calculation of its $35,167.19 reimbursement to the lender is found at RX 14, p. 2. The detail to support RX 14 comes in part from RX 8, which became incomplete when Chase sold the home for $55,500.00, and in part from RX 13, which supplements RX 8, to show the Recovery:

$ 72,055.08 Unpaid Principal Balance
$ 8,912.41 Unpaid Interest Balance
$ 2,041.08 Protective advances to pay unpaid real estate taxes and unpaid insurance premiums, plus $68.74 interest on protective advances
$ 83,008.57
+ $ 9,556.30 Lender Expenses to Sell Property (RX 14, p. 2 for detail)

$ 92,564.87 Total Debt Charged to Petitioner Earl
=========

- $ 50,000.00 Liquidation Value of the Home[1]

$ 42,564.87 Amount Due Before Credits, Refunds, Recovery
=========

- $ 3,003.18 Credits and Refunds

- $ 4,394.50 Recovery [the portion of the $5,170.00 that went to USDA Rural Development; the other $775.50 went to Chase. RX 13]
$ 35,167.19
=========
RX 14, p. 2, USDA Rural Development Narrative, and testimony.

15. Petitioner Earl requests evaluation of the lender costs that USDA Rural Development paid, and that he is consequently required to repay. He

[1] *But see* RX 13, p. 1. The lender, Chase, sold the home for greater than the liquidation value, and Petitioner Earl was given credit for the better price. See Settlement Statement (RX 19), showing the home sold for $55,500.00 on April 23, 2010. After an allowance for $330.00 additional commission, the $5,170.00 that resulted from the difference between the Liquidation Appraised Value and the Adjusted Sales Price was apportioned between USDA Rural Development and the lender Chase. RX 13, p. 2.

questions especially whether he is paying double when liable for both the $5,935.00 Estimated Sale Expenses (11.87% of liquidation value) (RX 14, p. 2) and a sales commission. The Settlement Statement (RX 19) details the $6,791.04 reduction to the Seller from the $55,500.00 sale price. I am persuaded by the evidence as a whole, including Michelle Tanner's testimony, that Petitioner Earl is not paying double for any of the costs associated with (a) the foreclosure, followed by (b) sale of the REO.

16. Collections from Treasury (from Petitioner Earl, through garnishment) applied to the debt (after collection fees are subtracted) leave **$32,979.14** unpaid as of January 24, 2012 (excluding the potential remaining collection fees). *See* RX 20, especially p. 1.

17. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **$32,979.14**, would increase the balance by $9,234.15, to $42,213.29. RX 20, especially p. 2.

18. Petitioner Earl moved to Sand Springs, Oklahoma to maintain shared custody of his two children. PX 1, p. 8. The home did not sell. Petitioner Earl was unable to obtain concessions from Chase. PX 1. Petitioner Earl is now left with this large debt and difficulty in meeting his family's requirements. At present he is unable to provide his wife's health insurance, because he cannot afford to, and in December he took his daughter out of pre-kindergarten classes because he cannot afford the classes.

19. Petitioner Earl works as a laborer, making $26.00 per hour. He earns overtime pay on occasion. Petitioner Earl's pay stubs are excellently prepared to allow me to calculate his disposable pay (within the meaning of 31 C.F.R. § 285.11). For example, I calculate Petitioner Earl's disposable pay during 2011 as follows. From Petitioner Earl's $59,381.67 annual gross pay, I subtract two amounts: $6,981.48 in annual health insurance deductions and $8,979.23 in annual payroll tax deductions.] *See* PX 5. The pay stub itself shows the first subtraction: $52,400.19 is what is left after the health insurance deductions are subtracted (including health, dental, FSA Med, and vision). The second subtraction (of annual income taxes, Social Security, and Medicare) yields $43,420.96 annual disposable pay. [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.] Thus, Petitioner Earl's disposable pay during 2011 averaged $3,618.41 per month. Petitioner Earl is paid weekly, and I calculate his weekly disposable pay during 2011 to have been roughly $835. Petitioner Earl's disposable pay will be less going forward, as deductions such as health insurance premiums increase. Garnishment to repay the debt may be no greater than 15% of disposable pay, so the maximum amount allowable has been, on average, about $125.25 per week. Consistently, $186.72 has been taken (too much). Although each week's disposable pay has to be individually calculated, I am persuaded by PX 5 that more than the law allows has consistently been taken.

20. Petitioner Earl is married with three young children to support. Petitioner Earl's Consumer Debtor Financial Statement filed January 17, 2012 shows that his current living expenses are reasonable. In addition to those living expenses, Petitioner Earl is still dealing with financial burdens caused by his former wife. Petitioner Earl does receive child support from his former wife. Even so, garnishment at 15% of Petitioner Earl's disposable pay would currently cause Petitioner Earl financial hardship.

21. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 6) must be limited to **5%** of Petitioner Earl's disposable pay through March 2013; then **up to 10%** of Petitioner Earl's disposable pay beginning April 2013 through March 2014; then **up to 15%** of Petitioner Earl's disposable pay thereafter. 31 C.F.R. § 285.11.

22. Petitioner Earl, you may want to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

23. I encourage **Petitioner Earl and the collection agency** to **negotiate** the repayment of the debt. Petitioner Earl, 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 Earl, 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. 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. You may wish to include someone else with you in the telephone call when you call to negotiate.

Findings, Analysis and Conclusions

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

25. Petitioner Earl owes the debt described in paragraphs 5 through 17.

26. Garnishment is authorized, but to prevent financial hardship shall be limited as follows: through March 2013, garnishment **up to 5%** of Petitioner Earl's disposable pay; beginning April 2013 through March 2014, garnishment **up to 10%** of Petitioner Earl's disposable pay; and thereafter, garnishment **up to 15%** of Petitioner Earl's disposable pay. 31 C.F.R. § 285.11.

27. Any amounts collected through garnishment of Petitioner Earl's pay prior to implementation of this Decision **shall be returned to Petitioner Earl**.

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

ORDER

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

30. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment **up to 5%** of Petitioner Earl's disposable pay through March 2013. Beginning April 2013 through March 2014, garnishment **up to 10%** of Petitioner Earl's disposable pay is

authorized; and garnishment **up to 15%** of Petitioner Earl's disposable pay thereafter. 31 C.F.R. § 285.11.

31. USDA Rural Development, and those collecting on its behalf, will be required to **return to** Petitioner **Earl** any amounts already collected through garnishment of Petitioner Earl's pay, prior to implementation of this Decision.

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

_____

In re: SHARRIE J. BEROWSKI.
Docket No. 12-0094.
Decision and Order.
Filed February 17, 2012.

AWG.

Sharrie J. Berowski, pro se.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

1. The hearing by telephone was held as scheduled on February 2, 2012. Sharrie J. Berowski, formerly known as Sharrie J. Voigt, the Petitioner ("Petitioner Berowski"), 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. Petitioner Berowski's Narrative, Witness & Exhibit List; plus Judgment of Dissolution of Marriage exhibit; plus completed "Consumer

Debtor Financial Statement," were filed on January 27, 2012, and are admitted into evidence, together with the testimony of Petitioner Berowski, together with her Hearing Request and all accompanying documents (filed December 7, 2011).

4. USDA Rural Development's Exhibits RX 1 through RX 4, plus Narrative, Witness & Exhibit List, were filed on January 10, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner. Also admitted into evidence is USDA Rural Development's exhibit filed post-hearing on February 2, 2012: Exhibit RX 5, Subsidy Repayment Agreement; plus Exhibit List.

5. Petitioner Berowski owes to USDA Rural Development a balance of **$23,596.69** (as of January 5, 2012) in repayment of a United States Department of Agriculture Farmers Home Administration loan assumed in 1992 (RX 5), for a home in Illinois. The balance is now unsecured ("the debt"). *See* USDA Rural Development Exhibits RX 1 through RX 5, plus Narrative, Witness & Exhibit Lists (filed January 10, 2012, and February 2, 2012).

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **$23,596.69** would increase the current balance by $6,607.07, to $30,203.76. *See* USDA Rural Development Exhibits, esp. RX 4, p. 4.

7. The amount Petitioner Berowski borrowed in 1992 was $45,200.00. RX 5. The loan was accelerated for foreclosure May 17, 1997. Before a foreclosure sale was held, a short sale was approved and completed on March 10, 1999. RX 3, p. 1, and USDA Rural Development Narrative.

$ 43,922.53 Unpaid Principal Balance prior to short sale
$ 6,969.24 Unpaid Interest Balance prior to short sale
$ 3,422.74 Recoverable costs and fees (fees includes unpaid real estate taxes, unpaid insurance premiums), interest on fees, and other items, pre-sale and post-sale)

$ 54,314.51

- 21,953.38 Received from the short sale

$ 32,361.13 Total Amount Due, after short sale proceeds applied
=========

RX 4, p. 1, and USDA Rural Development Narrative.

Collections from Treasury (largely from Petitioner Berowski, through ***offset***) leave **$23,596.69** unpaid as of January 5, 2012 (excluding the potential remaining collection fees). *See* RX 4, pp. 1, 2, 3 and 4, and USDA Rural Development Narrative.

Petitioner Berowski asks that she and her co-borrower, her former husband, be required to pay equal amounts of the amount that was owed when they divorced in 2007, because their Distribution of Property/Apportionment of Debts divided the debt 50-50 (one-half to each). This is shown in Petitioner Berowski's Hearing Request documents and also her filing on January 27, 2012. Petitioner Berowski's request is reasonable and sensible; perhaps she and her co-borrower will be able to agree between themselves to such a division of the debt. If Petitioner Berowski has any recourse against her co-borrower for reimbursement for amounts she has paid on the debt, she may want to pursue that. But USDA Rural Development, and those collecting on its behalf, are <u>not</u> limited to taking only half the debt repayment from each of them. Rather, USDA Rural Development could collect, legally, the entire unpaid balance of the debt from Petitioner Berowski. [And, likewise, USDA Rural Development could collect, legally, the entire unpaid balance of the debt from Petitioner Berowski's co-borrower.]

8. Petitioner Berowski has repaid substantial amounts of the debt through ***offset*** of her federal income tax refunds and her stimulus money (RX 4, p. 2). Petitioner Berowski is a single mother with a teenage son to support. She testified that their living expenses are "bare bones," "no t.v." Petitioner Berowski's Consumer Debtor Financial Statement filed January 27, 2012 shows that her living expenses are reasonable. She has higher expenses during the winter, because her asthma medications plus doctor visits increase (as much as $100.00 per month for medication, and $30.00 to $60.00 per month for doctor appointments). Petitioner Berowski works as a WIA Youth Case Manager. She is paid every two weeks.

Her disposable pay (within the meaning of 31 C.F.R. § 285.11) is roughly $1,800.00 per month from her Case Manager job. [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.] Petitioner Berowski also works a second job with the school district, part-time. She receives child support. Nevertheless, currently, garnishment at 15% of Petitioner Berowski's disposable pay would likely cause Petitioner Berowski financial hardship.

9. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **0%** of Petitioner Berowski's disposable pay through December 2012; then **up to 7%** of Petitioner Berowski's disposable pay beginning January 2013 through December 2014; then **up to 15%** of Petitioner Berowski's disposable pay thereafter. 31 C.F.R. § 285.11.

10. Petitioner Berowski is responsible and willing and able to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

11. Through December 2012, no garnishment is authorized. Beginning January 2013 through December 2014, garnishment up to 7% of Petitioner Berowski's disposable pay is authorized; and thereafter, garnishment up to 15% of Petitioner Berowski's disposable pay is authorized. *See* paragraphs 8, 9 and 10. I encourage **Petitioner Berowski and the collection agency** to **negotiate** the repayment of the debt. Petitioner Berowski, 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 Berowski, 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. You may ask that **the debt be apportioned between you and your co-borrower**. Petitioner Berowski, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

13. Petitioner Berowski owes the debt described in paragraphs 5, 6 and 7.

14. When Petitioner Berowski entered into the borrowing transaction with her co-borrower, Mr. Scott A. Berowski, certain responsibilities were fixed, as to each of them, such that each of them owes the entire debt, and USDA Rural Development, and those collecting on its behalf, are not restricted to collecting equal amounts from each of them. [The debt is her co-borrower's and her joint-and-several obligation.] *See* paragraph 8.

15. **Garnishment is authorized**, as follows: through December 2012, **no** garnishment. Beginning January 2013 through December 2014, garnishment **up to 7%** of Petitioner Berowski's disposable pay; and thereafter, garnishment **up to 15%** of Petitioner Berowski's disposable pay. 31 C.F.R. § 285.11.

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

ORDER

17. Until the debt is repaid, Petitioner Berowski 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).

18. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment through December 2012. Beginning January 2013 through December 2014, garnishment **up to 7%** of Petitioner Berowski's disposable pay is authorized; and garnishment **up to 15%** of Petitioner Berowski'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.

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In re: ANGELENA LANG.
AWG Docket No. 12-0078.
Decision and Order.
Filed February 21, 2012.

AWG.

Angelena Lang, pro se.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

1. The hearing by telephone was held on January 31 and February 8, 2012. Angelena Lang, also known as Angelena K. Lang, formerly known as Angelena K. Pigott, the Petitioner ("Petitioner Lang"), 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. Petitioner Lang's completed "Consumer Debtor Financial Statement," was filed on January 25, 2012, together with her Hardship Letter dated November 1, 2011, and her email message dated January 24, 2012, and are all admitted into evidence, together with the testimony of Petitioner Lang, together with her Hearing Request and all accompanying documents (filed November 18, 2011).

4. USDA Rural Development's Exhibits RX 1 through RX 7, plus Narrative, Witness & Exhibit List, were filed on December 30, 2011, and are admitted into evidence, together with the testimony of Michelle

Tanner. Also admitted into evidence are USDA Rural Development's exhibits filed on February 3, 2012: Exhibits RX 8 through RX 10; plus Narrative and Exhibit List.

5. Petitioner Lang owes to USDA Rural Development a balance of **$21,207.76** (as of December 29, 2011) in repayment of a United States Department of Agriculture Rural Housing Service loan borrowed in 2001 (RX 1), for a home in Florida. The balance is now unsecured ("the debt"). *See* USDA Rural Development Exhibits RX 1 through RX 10, plus Narratives, etc. (filed December 30, 2011, and February 3, 2012). [**The loan balance has changed** from the December 29, 2011 balance of $21,207.76 (excluding collection costs), **because garnishment is ongoing** (*see* RX 6); the balance will have therefore been reduced and will continue to change.

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **$21,207.76** would increase the current balance by $5,938.17, to $27,145.93. *See* USDA Rural Development Exhibits, esp. RX 6, p. 6.

7. The amount Petitioner Lang borrowed in 2001 was $91,745.00. RX 1. The loan was accelerated for foreclosure on December 24, 2003. The property was to be sold on June 2, 2005. Petitioner Lang's Chapter 13 bankruptcy filed on May 11, 2005 prevented the sale. The bankruptcy was dismissed on August 27, 2007. The foreclosure sale was then held on June 30, 2008. USDA Rural Development Narrative, and RX 6, esp. p. 1.

$ 88,164.95 Unpaid Principal Balance prior to foreclosure sale
$ 21,820.83 Unpaid Interest Balance prior to foreclosure sale
$ 13,049.93 "Fees" which means unpaid real estate taxes and unpaid insurance premiums), plus $72.19 interest on fees
$ 123,095.71
- 94,800.00 Funds applied from the foreclosure sale

$ 28,235.71 Total Amount Due, after foreclosure sale proceeds applied
=========

RX 6, p. 1, and USDA Rural Development Narratives. [USDA Rural Development was in first place and did not pay the second and third lien holders. *See* Narrative and Exhibits filed February 3, 2012.]

Collections from Treasury (from Petitioner Lang, mostly garnishment but also ***offsets***) leave **$21,207.76** unpaid as of December 29, 2011 (excluding the potential remaining collection fees). *See* RX 6 and USDA Rural Development Narrative.

8. Petitioner Lang's Consumer Debtor Financial Statement and testimony persuade me that garnishment at 15% of Petitioner Lang's disposable pay has caused Petitioner Lang financial hardship. Petitioner Lang works as a Procurement Associate. Petitioner Lang's disposable pay (within the meaning of 31 C.F.R. § 285.11) is between $2,100.00 and $2,300.00 per month, based on the amounts that have been garnished. RX 6, pp. 2-4, and Petitioner Lang's Hardship Letter, stating that, "There is a wage garnishment on my pay for about $320 a 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.]

9. Petitioner Lang and her husband have children to support. They need considerable time to recover from the financial hardship created by his service to our country. He serves in the Florida National Guard. Six months prior to his deployment, he lost his job working for a temporary agency and could not find another because of the short time (6 months) remaining before deployment. He had no income during that 6 months. He was deployed to Iraq for one year. Upon return from Iraq, because he had hurt his knee, he required knee surgery and had to stay at a base in Georgia for 4 months (about mid-December 2010 through March 2011). When back in Florida the jobs he found at first paid poorly (car sales, pest control), until the job he began in November 2011. Petitioner Lang and her husband have catching up to do financially. She receives child support, and her husband pays child support. Their living expenses are understated.

10. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **0%** of Petitioner Lang's disposable pay

through December 2013; then **up to 7%** of Petitioner Lang's disposable pay beginning January 2014 through December 2014; then **up to 15%** of Petitioner Lang's disposable pay thereafter. 31 C.F.R. § 285.11.

11. Petitioner Lang, you may want to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

12. Through December 2013, no garnishment is authorized. Beginning January 2014 through December 2014, garnishment up to 7% of Petitioner Lang's disposable pay is authorized; and thereafter, garnishment up to 15% of Petitioner Lang's disposable pay is authorized. *See* paragraphs 8, 9 and 10. I encourage **Petitioner Lang and the collection agency** to **negotiate** the repayment of the debt. Petitioner Lang, 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 Lang, 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 Lang, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

14. Petitioner Lang owes the debt described in paragraphs 5, 6 and 7.

15. **Garnishment is authorized**, as follows: through December 2013, **no** garnishment. Beginning January 2014 through December 2014, garnishment **up to 7%** of Petitioner Lang's disposable pay; and thereafter, garnishment **up to 15%** of Petitioner Lang's disposable pay. 31 C.F.R. § 285.11.

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

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

ORDER

18. Until the debt is repaid, Petitioner Lang 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).

19. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment through December 2013. Beginning January 2014 through December 2014, garnishment **up to 7%** of Petitioner Lang's disposable pay is authorized; and garnishment **up to 15%** of Petitioner Lang'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.

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In re: KRISTI LINDSTROM.
AWG Docket No. 12-0121.
Decision and Order.
Filed February 24, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an

administrative wage garnishment. On January 6, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-11 on January 18, 2012. The Petitioner filed her 4 page financial statement on January 31, 2012 (which I now label as PX-1). After the hearing on February 10, 2012, Petitioner filed her most recent pay stub (which I now label as PX-2). Petitioner has been employed at her current job for more than one year. Petitioner's husband obtained piecework employment after a lengthy period of layoff. On February 7, 2012, at the time set for the hearing, both parties were available for the hearing. Ms. Michelle Tanner represented RD and was present for the telephone conference. Ms. Lindstrom was available and represented herself. The parties were sworn.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On July 27, 2006, Petitioner and her husband John obtained a loan for the purchase of a primary home mortgage loan in the amount of $115,000.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase her home on a property located in 3## W. Ce**** Street, Leroy, IL 617##[1]. RX-2.

2. On/about the same time, the borrowers signed RD Form 1980-21 (A Loan Guarantee). RX-1.

3. The Borrowers became delinquent. The loan was accelerated for foreclosure on January 11, 2008. RX-8 @ p. 4 of 9.

[1] The complete address is maintained in USDA files.

4. A Chapter 13 bankruptcy was filed on/about July 30, 2008 which was released (not discharged) on/about March 23, 2009. RX 8 @ 5 of 9.

5. A foreclosure sale was scheduled on April 30, 2009. Narrative. RX-8 @ p. 4 of 9.

6. JP Morgan Chase (Chase) acquired the property for $83,300. Narrative. RX-5 @ p 1 of 3.

7. Chase had the property appraised at $102,000 on July 16, 2009 and then obtained a Broker's Price Opinion (BPO) at $98,000 on July 27, 2009. RX-8 @ p. 5 of 9.

8. The property was originally listed for $102,000.00 and then re-listed for $92,2000.00 on October 18, 2009.
Chase obtained a best offer bid for $92,000 which was accepted. RX 7 @ p. 1 of 5.

9. The principal loan balance for the RD loan prior to the foreclosure was $112,511.44, plus $18,991.49 for accrued interest, plus $3,494.92 for fees, plus $152.18 for interest on protective costs for a total of $135,150.03. Narrative, RX-10 @ p. 9 of 11.

10. In addition, as part of the foreclosure process, Chase was paid $14,749.69. RX 10 @ p. 9 of 11 for a grand total of $149,899.72.

11. After the sale proceeds were applied, borrowed owed $55,252.26. Narrative, RX-10 @ p. 9 of 11.

12. Treasury has collected $4,529.41 as a result of its off-set program. Narrative, RX- 11 @p. 1,2 of 4.

13. The remaining unpaid debt is in the amount of $50,722.85 - exclusive of potential Treasury fees. Narrative, RX-10.

14. The remaining potential fees from Treasury are $14,202.41. RX-11 @ p. 4 of 4.

15. Ms. Lindstrom states that has been employed at her present job for more than one year. PX-1.

16. She is married and is the parent of three minor children. PX-1. Her husband has acquired piece work employment approximately 30 miles from their home.

17. Borrower raised the issue of financial hardship. I performed a Financial Hardship calculation using the exhibits PX-1 and PX-2. I utilized the annual gross income of the 2010 tax return. In the calculation, knowledge of payroll tax and Medicare deductions were unnecessary for the determination of allowable wage garnishment since in the calculation, the "accepted" expenses resulted in a $0.00 allowable garnishment.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $50,722.85 exclusive of potential Treasury fees for the mortgage loan extended to her.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $14,202.41.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is **not** entitled to administratively garnish the wages of the Petitioner at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After one year, RD may re-assess the Petitioner's financial position.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

ADMINISTRATIVE WAGE GARNISHMENT ACT

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In re: SCOTTIE BYRD.
Docket No. 12-0095.
Decision and Order.
Filed February 27, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On January 6, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-10 on January 6, 2012. The Petitioner filed no additional documents other than his hearing request. During the hearing, I granted Mr. Byrd an additional week to file any financial documentation of financial hardship. No documents have been filed.

On February 2, 2012, at the time set for the hearing, Mr. Byrd was not originally available for the telephone conference. He did call in one hour later. Both parties then participated in the hearing. Ms. Michelle Tanner represented RD and was present for the telephone conference. Mr. Byrd was available and represented himself. The parties were sworn.
On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On December 23, 2003, Petitioner obtained a loan for the purchase of a primary home mortgage loan in the amount of $68,512.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase his home on a property located in 1## Ever*** Dr., Inman, SC 293##[1]. RX-3.

2. On/about the same time, the borrower signed RD Form 1980-21 (A Loan Guarantee). RX-1 @ p. 2 of 4.

3. The Borrower became delinquent. The loan was accelerated for foreclosure on April 22, 2005. RX-8 @ p. 5 of 10.

4. A foreclosure sale was ordered on June 29, 2005. Narrative. RX-6 @ p. 1 of 3.

5. JP Morgan Chase (Chase) acquired the property for $56,100 on August 1, 2005. Narrative, RX-8 @ p 5 of 10.

6. Chase had the property appraised at $62,000 on September 1, 2005 and then obtained a Broker's Price Opinion (BPO) at $47,000 on September 6, 2005. RX-8 @ p. 5 of 10.

7. The property was originally listed for $63,000.00 on September 16, 2005 and then re-listed for $55,000 on January 9, 2006. RX-8 @ p. 6 of 10.

8. When the property did not sell, RD credited Chase the Liquidation Value Appraisal of $52,000 on January 28, 2006. RX-8 @ p. 6 of 10.

9. The principal loan balance for the RD loan prior to the foreclosure was $67,877.34, plus $5,475.75 for accrued interest, plus $70.19 for additional interest for a total of $73,423.28. Narrative, RX-8 @ p. 8 of 10.

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[1] The complete address is maintained in USDA files.

10. Chase was credited $43,176.10 as the estimated proceeds from the Collateral. RX-8 @ p. 8 of 10.

11. After the loss claims were paid to Chase, the net loss Amount is $29,250.31. Narrative, RX-8 @ p. 9 of 10.

12. Treasury has not collected any monies as a result of its off-set program. Narrative, RX- 10 @p. 1 of 3.

13. The remaining unpaid debt is in the amount of $29,250.31 - exclusive of potential Treasury fees. Narrative.

14. The remaining potential fees from Treasury are $8,775.09. RX-10 @ p. 2 of 3.

15. Mr. Byrd states that he has been employed at his present job for more than one year. Testimony.

16. Mr. Byrd was granted an additional week to file evidence of his income and expenses. No documentation has been received.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $29,250.31 exclusive of potential Treasury fees for the mortgage loan extended to him.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $8,775.09.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is subject to administrative garnishment of his wages.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: ASHLEY SINGLETON a/k/a ASHLEY COBB.
Docket No. 12-0177.
Decision and Order.
Filed March 1, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Ashley Singleton, a/k/a Ashley Cobb ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"); and if established, the propriety of imposing administrative wage garnishment. On January 13, 2012, Petitioner requested a hearing. By Order issued January 27, 2012, a hearing was scheduled to commence on March 1, 2012, and the parties were directed to provide information and documentation to the Hearing Clerk for the Office of Administrative Law Judges for the United States Department of Agriculture.

On February 10, 2012, Respondent filed a Narrative, together with supporting documentation ("RX-1 through RX-9") and on February 28, 2012, Petitioner filed a Consumer Debtor Financial Statement ("PX-1"). Hearing commenced as scheduled. Petitioner represented herself, and Respondent was represented by Ms. Michelle Tanner of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri.

In her filings and at the hearing, Petitioner asserted that through a divorce decree, her ex-husband had been ordered to assume responsibility for all debts related to the promissory note for the purchase of the home loan at issue in this matter. I advised Petitioner that unless her husband had formally assumed responsibility for the debt by reaffirming the promissory note in his own name, she remained obligated for any indebtedness relating to the purchase of the real property. I suggested that Petitioner consult her divorce attorney to discuss this matter. I also advised her to seek legal advice about resolving the indebtedness.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law, and Order shall be entered:

Findings of Fact

1. On November 30, 2007, the Petitioner and her ex-husband received a home mortgage loan in the amount of $131,632.00 from First Tennessee Home Loans for the purchase of real property located in Morristown, Tennessee, evidenced by Promissory Note. RX-2; RX-3.

2. Before executing the promissory note for the loan, on October 17, 2007, Petitioner and her ex-husband requested a Single Family Housing Loan Guarantee from the USDA-RD, which was granted. RX-1.
3. By executing the guarantee request, Petitioner certified that she would reimburse USDA RD for the amount of any loss claim on the loan paid to the lender or its assigns. RX-1.

4. The loan was subsequently assigned to Tennessee Housing Development, Service of U.S. Bank. RX-2.

5. Petitioner left the property when she separated from her husband in November, 2009, and pursuant to the terms of the divorce decree, Mr. Cobb assumed liability for the debt related to the housing loan. PX-1.

6. The debt fell into default and a foreclosure sale was held on December 15, 2009, whereupon the property reverted to the lender at its bid of $112,200.00. RX-3; RX-6; RX-8.

7. On April 8, 2010, the property was sold to a third party for the amount of $108,000.00. RX-4; RX-5.

8. At the time of foreclosure, the amount due on the loan was $149,578.25, and an additional amount of $10,567.85 was added to the account for protective advances, attorney fees, appraisal and property inspection fees, and lender closing costs, which was paid by USDA-RD. RX-6.

9. The balance from the proceeds from the sale of the real property, amounting to $97,432.15, was applied to the loan account. RX-6.

10. USDA-RD paid a loss of $39,269.77, which remains the amount of the debt due on the account. RX-9.

11. USDA-RD offered to settle the debt with Petitioner, who forwarded the debt compromise offer to her ex-husband's attorney. RX-7; Petitioner's testimony.

12. No debt settlement occurred, and the loan was referred to the U.S. Department of Treasury ("Treasury") for collection on June 6, 2011, as mandated by law. RX-8.

13. As of February 7, 2012, the debt at Treasury is $39,269.77, with potential additional fees of $10,995.54 for a total of $50,265.31. RX-9.

14. Petitioner was advised of intent to garnish her wages to satisfy the indebtedness.

15. Petitioner timely requested a hearing, which was held on March 1, 2012.

16. Petitioner contended that wage garnishment against her salary would represent a substantial financial hardship.

17. Petitioner is a full-time student and her income is derived from part-time work limited by contract to 15 hours per week at an hourly rate of $8.85.

18. Petitioner's net pay is less than $500.00 per month.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Petitioner is indebted to USDA-RD in the amount of $39,269.77 exclusive of potential Treasury fees for the mortgage loan extended to her.

3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have not been met because Petitioner's wages are excluded from garnishment, pursuant to 5 U.S.C. § 1673(a)(2).

4. Respondent is not entitled to administratively garnish the wages of the Petitioner.

5. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

For the foregoing reasons, the wages of Petitioner shall **NOT** be subjected to administrative wage garnishment at this time.

Petitioner is encouraged in the interim to consult counsel regarding the resolution of this debt, including the option of negotiating repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in her address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: TERRY CLICK.
Docket No. 12-0023.
Decision and Order.
Filed March 5, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Terry Click ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"); and if established, the propriety of imposing administrative wage garnishment. On October 13, 2011, Petitioner requested a hearing. By Order issued November 23, 2011, a telephonic hearing was scheduled to commence on December 20, 2011, and the parties were directed to provide information and documentation to the Hearing Clerk for the Office of Administrative Law Judges for the United States Department of Agriculture.

On December 20, 2011, the case was reassigned to me. The hearing was rescheduled for January 31, 2012 by Order issued January 5, 2012.

On December 20, 2011, Respondent filed a Narrative, together with supporting documentation ("RX-1 through RX-10"). Petitioner did not file any written statement.

Hearing commenced as scheduled, but Petitioner did not answer the telephone number that he provided. Respondent was represented by Ms. Michelle Tanner of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri. I held the record open pending the filing of additional evidence by USDA-RD, and by Order issued January 31, 2012, I rescheduled the hearing to commence on March 1, 2012.

On February 2, 2012, Respondent filed additional evidence, which was also sent to Petitioner. At the time of the hearing, Petitioner again did not answer the telephone at the number that he had provided.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law, and Order shall be entered:

Findings of Fact

1. On April 15, 2009, the Petitioner received a home mortgage loan in the amount of $106,000.00 from Taylor Mortgage for the purchase of real property located in Arab, AL, evidenced by Promissory Note. RX-1; RX-2.

2. Before executing the promissory note for the loan, on March 11, 2009 Petitioner requested a Single Family Housing Loan Guarantee from the USDA-RD, which was granted. RX-2.

3. By executing the guarantee request, Petitioner certified that he would reimburse USDA RD for the amount of any loss claim on the loan paid to the lender or its assigns. RX-2.

4. On April 15, 2009, the loan was assigned to JP Morgan Chase Bank, NA. RX-1.

5. The debt fell into default and a foreclosure sale was held on May 10, 2010, with sales proceeds of $84,000.00. RX-5; RX-6; RX-7.

6. At the time of foreclosure, the amount due on the loan was $105,530.69 and after application of the sale proceeds, the debt stood at $37,212.92 which included reimbursements to the lender for protective advances, attorney fees, appraisal and property inspection fees, and lender closing costs. RX-3; RX-4.

7. USDA-RD paid a loss of $37,212.92, which remains the amount of the debt due on the account. RX-8.

8. USDA-RD offered to settle the debt with Petitioner. RX-9.

9. No debt settlement occurred, and the loan was referred to the U.S. Department of Treasury ("Treasury") for collection on August 8, 2011, as mandated by law. RX-9.

10. The unpaid debt at Treasury is $37,212.92, with potential additional fees of $10,419.62 for a total of $47,632.45. RX-10.

11. Petitioner was advised of intent to garnish his wages to satisfy the indebtedness.

12. Petitioner timely requested a hearing, which was held on March 1, 2012.

13. Petitioner failed to attend the hearing.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Petitioner is indebted to USDA-RD in the amount of $37,212.92 exclusive of potential Treasury fees for the mortgage loan extended to her.

3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

4. Respondent is entitled to administratively garnish the wages of the Petitioner at the full amount of 15.0% allowed by law.

5. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

For the foregoing reasons, up to 15% of the wages of Petitioner may be subjected to administrative wage garnishment.

Petitioner is encouraged to consult counsel regarding the resolution of this debt, including the option of negotiating repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: SALVADOR MEDINA.
Docket No. 12-0179.
Decision and Order.
Filed March 5, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

FINAL DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Salvador Medina ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Treasury ("Treasury") through the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"), and if established, the propriety of imposing administrative wage garnishment. By Order issued on January 27, 2012, the parties were directed to submit and exchange information and documentation concerning the existence of the debt. In addition, the matter was set for a telephonic hearing to commence on March 1, 2012 and deadlines for filing documents with the Hearing Clerk's Office were established. The Respondent filed a Narrative, together with supporting documentation on February 13, 2012 and Petitioner filed a Consumer Debtor Financial Statement on February 21, 2012.

I conducted a telephone hearing at the scheduled time on March 1, 2012. Respondent was represented by Michelle Tanner who testified on behalf of the RD agency. Petitioner, acting as his own representative, participated and testified with the assistance of his daughter, Celestina Medina, who interpreted questions, answers and statements made by the participants.

Petitioner acknowledged that he had received a copy of Respondent's narrative statement and exhibits identified. Respondent acknowledged receiving a copy of Petitioner's correspondence, including a Consumer Debtor Financial Statement. I hereby denote that statement as Petitioner's exhibit, PX-1.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered:

ADMINISTRATIVE WAGE GARNISHMENT ACT

Findings of Fact

1. On July 17, 2003, Petitioner Salvador Medina, together with his wife, obtained a home loan mortgage from First State Bank of DeQueen in the amount of $85,000.00 for the purchase of real property in Nashville, AR, evidenced by an executed promissory note. RX-2.

2. Subsequently, the loan was assigned to Chase Manhattan Mortgage. RX-2.

3. Prior to executing the loan documents, on June 3, 2003, Petitioner and his wife signed a request for Respondent to guarantee the loan. RX-1.

4. Petitioner defaulted on the loan, and foreclosure action ended with sale of the property to the lender on March 16, 2010. RX-4.

5. The lender paid protective advances, which together with the principal balance and interest accrued, resulted in a balance due on the loan in the amount of $94,031.13, of which $11,206.69 constituted the cost of liquidation of the property in the form of fees and maintenance. RX-5; RX-6.

6. The foreclosed property was sold to a third party on May 7, 2010 for the sum of $52,200.00. RX-4.

7. USDA RD paid Chase Manhattan Mortgage $39,115.73 as the amount of net loss under the guarantee agreement. RX-4; RX-5; RX-7.

8. The balance due on the borrowers' accounts after application of credits and proceeds from the sale of the property was $39,115.73 when the account was referred to the Department of Treasury ("Treasury") on July 7, 2011. RX-7; RX-8.

9. In addition, potential fees due to Treasury for debt collection pursuant to the Loan Guarantee Agreement are $10,875.67. RX-9.

10. Mr. Medina is gainfully employed, earning an hourly wage. PX-1.

11. Mr. Medina's monthly wages vary according to whether or not he works a full schedule.

12. Petitioner's schedule of expenses demonstrates disposable monthly income in excess of 15% of net income. PX-1.

13. In determining whether wage garnishment would constitute a hardship, I considered Petitioner's sworn testimony, his financial statement (PX-1), and Treasury Standard Form SF 329C (Wage Garnishment Worksheet).

Conclusions of Law

1. Petitioner Salvador Medina is indebted to USDA's Rural Development program in the amount of $49,717.37including potential fees due to Treasury.

2. All procedural requirements for administrative wage garnishment set forth in 31 C.F.R. §285.11 have been met.

3. Wage garnishment at the legally permissible amount would not constitute a hardship.

4. USDA-RD may administratively garnish Petitioner's wages in the amount of 15% percent of his monthly disposable Income.

5. Petitioner is advised that if he acquires the ability to negotiate a lump sum payment, he may be able to enter into a compromise settlement of the debt with the representatives of Treasury. Petitioner is further advised that such an agreement may lower anticipated fees for collecting the debt. In addition, Petitioner may inquire about whether he may enter into an arrangement to make installment payments to Treasury in lieu of garnishment. The toll free number for Treasury's agent is **1-888-826-3127**.

6. Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner, including income tax refunds.

7. Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

ORDER

1. Administrative Wage Garnishment may proceed at this time at the rate of 15.0% of Petitioner's Monthly Disposable Income.

2. Until the debt is satisfied, Petitioner shall give to USDA RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

_____

In re: TOM CHILDRESS
Docket No. 12-0161.
Decision and Order.
Filed March 7, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On January 27, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-5 on February 1, 2012. The Petitioner filed no additional documents other than his hearing request.

On February 23, 2012, at the time set for the hearing, both parties were available and participated in the hearing. Ms. Michelle Tanner represented RD. Mr. Childress represented himself. The parties were sworn. During the hearing, Mr. Childress stated he has been involuntarily unemployed since January 2012. *[Editor Note: "involuntary" substituted for voluntary"]*

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On August 15, 2000, Petitioner assumed the existing loan of his mother for the primary home mortgage loan in the amount of $38,000 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD), to re-finance his home on a property located in 6## D** Ave. Louisville, MS 39##[1]. RX-1@ p. 11 of 11.

2. The Borrower became delinquent. The loan was accelerated for foreclosure on May 23, 2002. RX-2.

3. A foreclosure sale was ordered on May 23, 2002. Narrative. RX-4 @ p. 2 of 2.

4. The net funds received from the foreclosure sale was $27,181.00. Narrative, RX-4.

5. The principal balance for the RD loan prior to the foreclosure was $28,653.32, plus $1,534.61 for accrued interest, less $95.90 for an escrow balance for a total of $31,252.82. Narrative, RX-4.

[1] The complete address is maintained in USDA files.

6. The total amount due after the sale was $4,071.82 (as hand corrected). RX-4.

7. Advertising fees (received post-sale) were $503.64 for a new total balance owed of $4,575.46. RX-4.

8. Treasury has collected $3,700.70 (less fees) a result of its off-set program. Narrative, RX- 5 @p. 1 of 3.

9. The remaining unpaid debt is in the amount of $874.76 - exclusive of potential Treasury fees. Narrative.

10. The remaining potential fees from Treasury are $262.43. RX-5 @ p. 2 of 3.

11. Mr. Childress states that he has been involuntarily unemployed since January 2012. Testimony.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $874.76 exclusive of potential Treasury fees for the mortgage loan extended to him.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $262.43.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Petitioner is not subject to administrative garnishment of his wages at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall not be subjected to administrative wage garnishment at this time.

After eleven months, Petitioner's financial position may be reviewed again.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: KAREN HAYES.
Docket No. 12-0180.
Decision and Order.
Filed March 7, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Karen Hayes ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Treasury ("Treasury") through the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"), and, if established, the propriety of imposing administrative wage garnishment. By Order issued on January 27, 2012, deadlines for the exchange and filing of information and documentation concerning the existence of the debt were established, and the matter was set for a telephonic hearing to commence on March 6, 2012.

The Respondent filed a Narrative, together with supporting documentation on February 15, 2012. (See, RX-1 through RX-6). On March 5, 2012, Petitioner filed a Consumer Debtor Financial Statement (PX-1).

I conducted a limited telephone hearing at the scheduled time on March 6, 2012. Petitioner initially asked for a continuance to consult counsel, but withdrew her request when she was informed that wage garnishment action would be suspended as she was not working. Petitioner advised that she was not working, and Respondent, represented by Michelle Tanner, advised that Petitioner's former employer had confirmed her employment status in writing.

Conclusions of Law

1. All procedural requirements for administrative wage garnishment set forth in 31 C.F.R. §285.11 have not been met because Petitioner is not employed.

2. USDA-RD may NOT administratively garnish Petitioner's wages.

3. This Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner, including income tax refunds.

4. Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

ORDER

1. No administrative wage garnishment may be taken.

2. Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in her address, phone numbers, or other means of contact. The toll free number for Treasury's agent is **1-888-826-3127**.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: SHERMAN A. CAREY.
Docket No. 12-0195.
Decision and Order.
Filed March 7, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

FINAL DECISION

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Sherman Carey ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Treasury ("Treasury") through the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"), and if established, the propriety of imposing administrative wage garnishment. By Order issued on *, 2012, the parties were directed to submit and exchange information and documentation concerning the existence of the debt. In addition, the matter was set for a telephonic hearing to commence on March 6, 2012 and deadlines for filing documents with the Hearing Clerk's Office were established. The Respondent filed a Narrative, together with supporting documentation on February 17, 2012. (RX-1 through RX-4). On February 24, 2012, Petitioner filed a Consumer Debtor Financial Statement. (PX-1).

I conducted a telephone hearing on March 6, 2012. Respondent was represented by Michelle Tanner who testified on behalf of the RD agency. Petitioner, acting as his own representative, testified. Petitioner acknowledged receipt of Respondent's narrative and exhibits, and Respondent had received Petitioner's submission, PX-1.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered:

ADMINISTRATIVE WAGE GARNISHMENT ACT

Findings of Fact

1. On June 23, 1995, Petitioner together with his wife assumed the obligation for an existing loan from USDA-RD in the amount of $46,508.40. Petitioner also obtained a direct loan from USDA-RD in the amount of $28,390.00 to complete the purchase of real property in Shady Point, OK, evidenced by an executed promissory note. RX-1.

2. On January 30, 1997, the loan was accelerated due to Petitioner's default, and foreclosure action ended with the property reverting to USDA-RD at the cost of $48,490.73. RX-2.

3. At the time of the foreclosure sale, the amount due on the loan account, including principal, interest, fees and protective advances was $81,759.73. RX-2.

4. The amount due on the account after application of the difference between the loan balance and the proceeds from the sale was $33,268.97, which was established as a debt on Petitioner's account, and referred to the Department of Treasury ("Treasury") for collection, as required by law. RX-2; RX-3.

5. The account has been substantially reduced through payments from Petitioner and as of March 6, 2012, remains at $14,559.58, plus potential fees due to Treasury for debt collection. RX-4; testimony of Michelle Tanner.

6. Petitioner credibly testified that he had entered into an agreement to pay a compromise of the debt through payments that he made through 2005, and he understood that his liability had been satisfied.

7. Petitioner believed that he could obtain some documentation of his agreement, and would contact Treasury regarding his understanding that the liability had been satisfied.

8. Petitioner's income and expenses support the continuation of wage garnishment without substantial hardship. PX-1.

9. In determining whether wage garnishment would constitute a hardship, I considered Petitioner's sworn testimony, his financial statement (PX-1), and Treasury Standard Form SF 329C (Wage Garnishment Worksheet).

Conclusions of Law

1. Petitioner is indebted to USDA's Rural Development program in the amount of $14,559.48, exclusive of potential fees due to Treasury.

2. All procedural requirements for administrative wage garnishment set forth in 31 C.F.R. §285.11 have been met.

3. Petitioner's request for a hearing regarding wage garnishment was not timely filed, and therefore, all amounts acquired through wage garnishment through the date of this Decision and Order shall remain applied against his account.

4. Wage garnishment at the legally permissible amount would not constitute a hardship.

5. USDA-RD may administratively garnish Petitioner's wages in the amount of 15% percent of his monthly disposable income, but not until the expiration of ninety (90) days suspension on collection.

6. Although garnishment is legally appropriate, garnishment shall be suspended for a period of ninety (90) days, beginning with the date of this Decision and Order, to allow Petitioner to provide Treasury with evidence of his agreement and understanding that the debt had been satisfied in 2005.

7. In the event that Treasury is unwilling or unable to accept Petitioner's position regarding the satisfaction of his debt, Petitioner is advised that if he acquires the ability to negotiate a lump sum payment, he may be able to enter into a separate compromise settlement of the debt with the representatives of Treasury.

8. Petitioner is further advised that such an agreement may lower anticipated fees for collecting the debt. In addition, Petitioner may inquire about whether he may enter into an arrangement to make installment payments to Treasury in lieu of garnishment.

9. The toll free number for Treasury's agent is **1-888-826-3127**.

10. Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner, including income tax refunds.

11. Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

ORDER

1. Administrative wage garnishment is hereby suspended for a period of ninety (90) days from the date of this Decision and Order.

2. Upon the conclusion of the ninety (90) day suspension period, wage garnishment may proceed at the rate of 15.0% of Petitioner's monthly disposable income, unless Petitioner is successful in showing satisfaction of the debt or entering a new settlement agreement with Treasury.

3. Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf at Treasury, notice of any change in his address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: ZACHARIAH EASLEY.
Docket No. 12-0196.
Decision and Order.
Filed March 7, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

FINAL DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Zachariah Easley ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Treasury ("Treasury") through the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"), and, if established, the propriety of imposing administrative wage garnishment. By Order issued on February 6, 2012, the parties were directed to exchange and filed submissions and a telephonic hearing was scheduled to commence on March 6, 2012. The Respondent filed a Narrative, together with supporting documentation on February 14, 2012.

I conducted a telephone hearing at the scheduled time on March 6, 2012. Respondent was represented by Michelle Tanner who testified on behalf of the RD agency. Petitioner did not participate in the hearing, though my staff attempted to contact him at the telephone number that he provided.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered:

Findings of Fact

1. On July 17, 2007, Petitioner obtained a home loan mortgage from Homestead Mortgage Services in the amount of $130,000.00 for the purchase of real property in Shady Point, OK, evidenced by an executed promissory note. RX-2.

2. Subsequently, the loan was assigned to JP Morgan Chase Bank. RX-2.

3. Prior to executing the loan documents, on June 3, 2003, Petitioner signed a request for Respondent USDA-RD to guarantee the loan, thereby agreeing to pay for any loss paid by Respondent to the lender or its assigns. RX-1.

4. Petitioner defaulted on the loan, and foreclosure action ended with sale of the property to the lender on June 9, 2009. RX-3; RX-4.

5. The lender paid protective advances, which together with the principal balance and interest accrued, resulted in a balance due on the loan in the amount of $166,487.21, of which $17,496.12 constituted the cost of liquidation of the property in the form of fees, advances and maintenance. RX-3; RX-6; RX-7.

6. The foreclosed property was sold to a third party on December 2, 2009 for the sum of $93,100.00. RX-5; RX-6.

7. USDA RD paid the lender a loss claim of $68,056.88 under the guarantee agreement. RX-7.

8. The amount of the claim was established as a debt on Petitioner's account, and Respondent offered to compromise the debt in correspondence dated June 30, 2010. RX-9.

9. On November 8, 2010, the account was referred to the Department of Treasury ("Treasury") for collection, pursuant to prevailing law. RX-9.

10. Potential fees due to Treasury for debt collection pursuant to the Loan Guarantee Agreement are $17,452.37. RX-9.

Conclusions of Law

1. Petitioner is indebted to USDA's Rural Development program in the amount of $79,782.26 including potential fees due to Treasury.

2. All procedural requirements for administrative wage garnishment set forth in 31 C.F.R. §285.11 have been met.

3. There is no evidence that wage garnishment at the legally permissible amount would constitute a hardship.

4. USDA-RD may administratively garnish Petitioner's wages in the amount of 15% percent of his monthly disposable income.

5. Petitioner is advised that if he acquires the ability to negotiate a lump sum payment, he may be able to enter into a compromise settlement of the debt with the representatives of Treasury. Petitioner is further advised that such an agreement may lower anticipated fees for collecting the debt. In addition, Petitioner may inquire about whether he may enter into an arrangement to make installment payments to Treasury in lieu of garnishment. The toll free number for Treasury's agent is **1-888-826-3127**.

6. Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner, including income tax refunds.

7. Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

ORDER

1. Administrative Wage Garnishment may proceed at this time at the rate of 15.0% of Petitioner's Monthly Disposable Income.

2. Until the debt is satisfied, Petitioner shall give to USDA RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: JANE CHRISTIAN, n/k/a JANE CHRISTIAN-HUTCHINSON.
Docket No. 12-0130.
Decision and Order.
Filed March 9, 2012.

AWG.

Jane Christian, pro se.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

1. The hearing by telephone was held on February 23, 2012. Jane Christian, now known as Jane Christian-Hutchinson, the Petitioner ("Petitioner Christian"), participated, representing herself (appearing *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. Petitioner Christian's completed "Consumer Debtor Financial Statement," was filed on February 15, 2012; together with PX 1 (a copy of the SATISFACTION OF JUDGMENT filed in 2002 in the District Court of the Virgin Islands, Division of St. Croix (Civil No. 2001-16)); together with Petitioner Christian's Narrative, and are all admitted into evidence, together with the testimony of Petitioner Christian, together with her Hearing Request and all accompanying documents (filed December 30, 2011).

4. USDA Rural Development's Exhibits RX 1 through RX 6, plus Narrative, Witness & Exhibit List, were filed on February 10, 2011, and are admitted into evidence, together with the testimony of Michelle

Tanner. Also admitted into evidence is USDA Rural Development's email filed the day after the hearing, on February 24, 2012.

5. Petitioner Christian owes nothing to USDA Rural Development, based on the SATISFACTION OF JUDGMENT (PX 1).

Findings, Analysis and Conclusions

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

7. Petitioner Christian owes nothing to USDA Rural Development, based on the SATISFACTION OF JUDGMENT (PX 1).

8. USDA Rural Development has recalled the debt from Treasury, the remaining Balance to be **canceled** by USDA Rural Development. *See* USDA Rural Development's email filed on February 24, 2012.

9. **NO** garnishment is authorized; **no** repayment of the debt through ***offset*** of Petitioner Christian's **income tax refunds** or other **Federal monies** is authorized; no form of further debt collection from Petitioner Christian in this matter is authorized.

ORDER

10.**No** further debt collection from Petitioner Christian in this matter is authorized; further, any monies collected from Petitioner Christian after the 2002 SATISFACTION OF JUDGMENT ***shall be returned to Petitioner Christian***.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties, together with a copy of USDA Rural Development's email filed on February 24, 2012.

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ADMINISTRATIVE WAGE GARNISHMENT ACT

In re: WILLIAM WEST.
Docket No. 12-0149.
Decision and Order.
Filed March 16, 2012.

AWG.

Anne Oda, Esq. for Petitioner.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

FINAL DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of William West ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Treasury ("Treasury") through the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"), and if established, the propriety of imposing administrative wage garnishment. By Order issued on January 25, 2012, deadlines were established for the filing and exchange of evidence and the matter was set for a telephonic hearing to commence on March 13, 2012.

Petitioner's counsel, Anne Odam, entered an appearance on behalf of Mr. West. Respondent filed a Narrative, together with supporting documentation, and Petitioner filed a Consumer Debtor Financial Statement, together with supporting documentation.

I conducted a telephone hearing on March 13, 2012. Respondent was represented by Michelle Tanner, who testified on behalf of the RD agency. Petitioner was represented by his counsel, and he testified. The parties' submissions were admitted to the record.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered:

Findings of Fact

1. On March 24, 1986, Petitioner together with his wife Lisa West, assumed the obligation for an existing loan from USDA-RD in the amount

of $36,165.16 for the purchase of real property in Amory, MS, evidenced by the Assumption Agreement. RX-1.

2. On May 28, 1992, pursuant to a divorce settlement, Petitioner deeded his rights to the encumbered property to Lisa West, who agreed to assume the obligations for the payment of the loan to USDA-RD, by deed recorded on July 9, 1993 at the County of Monroe, State of Mississippi. PX-2.

3. Petitioner and Lisa West made application to USDA-RD for reaffirmation and assumption of the real estate obligation by Lisa West.

4. Petitioner made inquiries about the approval of the application and believed that USDA-RD approved the assumption by Lisa West.

5. Petitioner received no further notice regarding the loan until a foreclosure action was initiated.

6. The loan was accelerated on May 21, 2002, and foreclosure was initiated. RX-2.

7. The property was sold before foreclosure was completed on April 20, 2006 for $25,000.00. RX-4.

8. At the time of the sale, the amount due on the loan account, including principal, interest, fees and protective advances was $24,053.17. RX-3.

9. A refund of $18.30 was applied to the account, leaving an amount due on the account of $24,034.57. RX-3.

10. On April 27, 2006, a debt settlement was processed. RX-3.

11. Petitioner was not included in the debt settlement process.

12. On July 5, 2006, the debt in the amount of $24,034.57 was forwarded to Treasury for collection pursuant to law. RX-3.

13.$4,262.33 was collected by Treasury and applied to the account, which now amounts to $19,772.54 plus potential collection fees of $5,536.31 for a total potential debt of $25,308.85. RX-5.

Conclusions of Law

1. I fully credit Petitioner's testimony regarding his attempts to resolve the debt, as such testimony was supported by the assertions of his counsel, who represented him throughout his divorce and the subsequent property distribution.

2. USDA-RD's failure to fully provide due process to Petitioner regarding his status viz-a-viz his ex-wife's assumption of the debt, combined with Petitioner's due diligence to confirm his release from liability, casts a cloud on USDA-RD's entitlement to continue to collect the debt from Petitioner.

3. Petitioner is NOT indebted to USDA's Rural Development program for the deficiency on his real estate loan due to equitable estoppel.

4. All procedural requirements for debt collection were not met by USDA-RD, and due to failure to properly give notice to Petitioner of the status of the assumption of the debt by his ex-wife, and the potential of relief through USDA-RD's debt settlement program, USDA-RD has failed to establish the validity of the debt.

5. USDA-RD may NOT administratively garnish Petitioner's wages.

6. Petitioner should NOT be obligated for this debt.

7. The amounts collected from Petitioner shall not be refunded to him, but rather, Petitioner retains the right to pursue collection for those amounts from Lisa West, who assumed liability for the debt.

ORDER

1. Administrative wage garnishment is NOT warranted as the validity of the debt has not been established.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: TOBBY E. BURGESS.
Docket No. 12-0217.
Decision and Order.
Filed March 16, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Tobby E. Burgess ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the U.S. Department of Agriculture, Rural Development ("USDA-RD"; "Respondent"), and if established, the propriety of imposing administrative wage garnishment. By Order issued on February 21, 2012, the parties were directed to file and exchange information and documentation and the matter was set for a hearing to commence by telephone on March 14, 2012.

On February 23, 2012, Respondent filed a Narrative, together with supporting documentation. Petitioner did not file any documents, nor provide an update telephone number. At the time the hearing was scheduled, attempts were made to contact the Petitioner, but they failed. Testimony was given by Respondent's representative, Michelle Tanner, of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri.

On the basis of the entire record before me, the following Findings of Fact and Conclusions of Law and Order will be entered:

ADMINISTRATIVE WAGE GARNISHMENT ACT

Findings of Fact

1. On March 24, 1995, the Petitioner together with his wife Maria Burgess[1] assumed an existing loan in the amount of $60,497.00 and obtained an addition loan in the amount of $33,600.00 from USDA-RD for the purchase of residential property located in Sutter, California. RX 1.

2. On April 12, 1999, Petitioner sold the home through assumption for $88,000.00. RX-3-RX-7.

3. At the time of the sale, Petitioner's loan account amounted to $99,107.18, consisting of principal and interest. RX-2.

4. Additional fees related to the sale of the property were added to the outstanding balance. RX-2.

5. After application of the proceeds of the sale, there remained an unpaid amount of $11,491.16. RX-2.

6. USDA-RD offered to compromise the balance due on the account, but Petitioner did not apply for that relief. RX-6.

7. Thereafter, the account was referred to Treasury for collection as required by law. RX-7.

8. In addition to the uncollected amount of debt of $11,491.16, Treasury's potential fees of $3,217.52 are added for a total potential indebtedness of $14,708.68. RX-9.

9. Treasury, through its agent, issued a notice to Petitioner of intent to garnish his wages, and Petitioner timely filed a petition for a hearing.

10. Petitioner challenged the validity of the debt but failed to provide information about his whereabouts for participation in a hearing.

11. Following Notice of Hearing, a hearing was held on March 14, 2012.

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[1] Maria Burgess filed Bankruptcy and her indebtedness for this loan was discharged. RX-8.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Petitioner is indebted to USDA RD in the amount of $11,491.16, exclusive of potential Treasury fees for the mortgage loan extended to him.

3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

4. The Respondent is entitled to administratively garnish the wages of the Petitioner at this time, because there is no evidence that garnishment would represent a hardship.

5. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment at this time.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk's Office.

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In re: SIDNEY COBB.
Docket No. 12-0220.
Decision and Order.
Filed March 16, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Sidney Cobb ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the U.S. Department of Agriculture, Rural Development ("USDA-RD"; "Respondent"), and if established, the propriety of imposing administrative wage garnishment. By Order issued on February 21, 2012, the parties were directed to file and exchange information and documentation and the matter was set for a hearing to commence by telephone on March 14, 2012.

The Respondent filed a Narrative, together with supporting documentation[1]. Petitioner did not file any documents. The hearing was held as scheduled, and testimony was given by Petitioner, and by

[1] References to Respondent's exhibits herein shall be denoted as "RX-#".

Respondent's representative, Michelle Tanner, of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri.

On the basis of the entire record before me, the following Findings of Fact and Conclusions of Law and Order will be entered:

Findings of Fact

1. On August 29, 1996, the Petitioner received a home mortgage loan in the amount of $62,780.00 from USDA-RD for the purchase of residential property located in Forest City, Pennsylvania. RX 1.

2. On October 26, 2000, Petitioner's account was accelerated for monetary default. RX-2.

3. On December 4, 2003 a foreclosure sale of the property yielded $20,000.00, and after costs of the sale, $19,294.55 was tendered to USDA-RD. RX-3.

4. At the time of the foreclosure sale, the balance due on the account was $85,851.49, consisting of principal, accrued interest, protective advances, attorney fees, appraisal and property inspection fees. RX-3.

5. After applying the proceeds from the sale, $66,556.94 remained on the account with USDA-RD. RX-3.

6. On April 16, 2004, USDA-RD sent Petitioner an offer to compromise the balance due on the account. RX-4.

7. Petitioner did not receive the offer, as he was no longer at the address where the offer was sent.

8. When Petitioner did not respond to the offer to settle the debt, on July 6, 2004, the account was referred to Treasury for collection as required by law. RX-5.

9. When the account was referred to Treasury, it consisted of $66,556.94 plus Treasury's potential fees of $19,967.08, for a total potential indebtedness of $86,524.02. RX-5.

10. Treasury, through its agent, issued a notice to Petitioner of intent to garnish his wages, and Petitioner timely filed a petition for a hearing.

11. Petitioner challenged the amount of the debt, asserting that he had not been given credit for income tax refund offsets that had been applied to his account.

12. Following Notice of Hearing, a hearing was held on March 14, 2012.

13. At the hearing, Respondent's representative credibly testified that she had conducted a diligent search of Petitioner's account status in response to his objection.

14. As the result of that search, Respondent acknowledged that Petitioner's tax refunds had been intercepted by Treasury, but credits had not been applied to the account balance.

15. After crediting the account, the balance due is $52,361.94, exclusive of potential fees.

16. Petitioner provided a verbal summary of his expenses and income.

17. Petitioner is currently unemployed, but his work is seasonal and he hopes to return in the near future.

18. Petitioner is responsible for his dependent infant and the child's mother, who live with him.

19. Petitioner's monthly obligations include child support for his other minor children who do not reside with him.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Petitioner is indebted to USDA RD in the amount of $52,361.94, exclusive of potential Treasury fees for the mortgage loan extended to him.

3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

4. The Respondent is NOT entitled to administratively garnish the wages of the Petitioner at this time, because garnishment would represent a hardship, as there is no excess of Petitioner's income after expenses.

5. Even if Petitioner returns to work at full pay, his expenses will be absorbed by his income.

6. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. 31 C.F.R. §285.11.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk's Office.

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In re: CLIFFORD STARCHER.
Docket No. 12-0230.
Decision and Order.
Filed March 16, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Clifford Starcher ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the U.S. Department of Agriculture, Rural Development ("USDA-RD"; "Respondent"), and if established, the propriety of imposing administrative wage garnishment. By Order issued on February 21, 2012, the parties were directed to file and exchange information and documentation and the matter was set for a hearing to commence by telephone on March 15, 2012.

The Respondent filed a Narrative, together with supporting documentation[1]. Petitioner did not file any documents. The hearing was held as scheduled, and testimony was given by Petitioner, and by Respondent's representative, Michelle Tanner, of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri.

On the basis of the entire record before me, the following Findings of Fact and Conclusions of Law and Order will be entered:

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[1] References to Respondent's exhibits herein shall be denoted as "RX-#".

Findings of Fact

1. On August 22, 2007, the Petitioner received a home mortgage loan in the amount of $70,000.00 from Wells Fargo Bank, NA for the purchase of residential property located in Greeneville, Tennessee. RX-2.

2. On August 6, 2007, Petitioner signed a loan guarantee from USDA-RD, whereby he agreed to reimburse USDA-RD for any loss paid to Wells Fargo Bank. RX-1.

3. On February 18, 2008, Petitioner's account was accelerated for monetary default. RX-3.

4. On May 21, 2009 the property reverted to Wells Fargo Bank after foreclosure for a bid of $61,200.00. RX-.

5. At the time of the foreclosure sale, the balance due on the account was $79,839.15 consisting of principal, accrued interest, protective advances, attorney fees, appraisal and property inspection fees. RX-.

6. On June 15, 2009, Wells Fargo Bank listed the property for sale with Finigan, Rheta Realty Executives East and the property was sold in "as is" condition on December 23, 2009 for $31,500.00. RX-.

7. After applying the proceeds from the sale, $44,529.23 remained on the account, which USDA-RD paid as a loss to Wells Fargo Bank. RX-.

8. USDA-RD advised Petitioner of the balance due on the account, but was required to refer the account to Treasury for collection. RX-.

9. Due to credits applied to the account from offset of petitioner's income tax refund, the account currently is at Treasury in the amount of $37,561.25, plus potential fees. RX-.

10. Following Notice of Hearing, a hearing was held on March 15, 2012.

11. Petitioner provided a verbal summary of his expenses and income.

12. Petitioner is currently employed, and earns $15.00 per hour for a forty hour week.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Petitioner is indebted to USDA-RD in the amount of $37,561.25 exclusive of potential Treasury fees for the mortgage loan extended to him.

3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

4. The Respondent is NOT entitled to administratively garnish the wages of the Petitioner at this time, because garnishment would represent a hardship, as there is no excess of Petitioner's income after expenses.

5. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. 31 C.F.R. §285.11.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk's Office. Petitioner's address is:
***** Asheville Highway
****ville, TN **743

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In re: RAMON ALMANZAN.
Docket No. 12-0194.
Decision and Order.
Filed March 19, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On February 6, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-6 on February 10, 2012. Following the hearing, on March 7, 2012 RD filed additional exhibits RX-7 and 8. The

Petitioner filed his exhibits (Financial Disclosures) on February 23, 2012 which I now label as PX-1. He was given until March 14, 2012 to file any additional documents, but none have been received.

On February 29, 2012, at the time set for the hearing, both parties were available and participated in the hearing. Ms. Michelle Tanner represented RD. Mr. Almanzan represented himself. The parties were sworn. During the hearing, Mr. Almanzan stated he has been employed for more than one year. He also alleged that there were Treasury tax intercepts that were not counted in RD's documents. I performed a Financial Hardship based upon the financial statements provided by Mr. Almanzan under oath.[1]

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On March 27, 2000, Petitioner obtained a loan for the primary home mortgage in the amount of $74,000 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD), to re-finance his home on a property located in 12## Magu*** Horizon City, TX 79###[2]. RX-1.

2. The Borrower became delinquent. The loan was accelerated for foreclosure on February 6, 2007. RX-2.

3. A foreclosure sale was ordered and held on February 2, 2010. Narrative. RX-3.

4. USDA acquired the property at the foreclosure sale for $68,902.00. Narrative, RX-6.

5. The principal balance for the RD loan prior to the foreclosure was $61,668.10, plus $16,023.98 for accrued interest, plus $8,933.04 for costs, plus interest on the fee balance of $54.80 for a total of $86,679.92.

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[1] The Financial Hardship calculation is not posted on the OALJ website.
[2] The complete address is maintained in USDA files.

Additionally, there was a post-sale charge of $386.00 for a new total balance of $87,065.92. Narrative, RX-6.

6. The total amount due after the sale was $18,065.21. Narrative, RX-6.
7. Prior to the foreclosure sale, Treasury made tax refund intercepts of $2,710.00 on (3/1/2007), $3,662.00 on (3/27/2008), $1,183.00 on (7/17/2008). RX-8.

8. Following the foreclosure sale, Treasury made three (3) wage garnishments bringing the new amount owed to $17,874.37 – exclusive of potential Treasury fees. RX-7.

9. The remaining potential fees from Treasury are $5,004.83. RX-7.
10. Mr. Almanzan states that he has been employed for more than one year. Testimony.

11. Petitioner raised the issue of Financial Hardship.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $17,874.37 exclusive of potential Treasury fees for the mortgage loan extended to him.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $5,004.83.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Petitioner is not subject to administrative garnishment of his wages at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall not be subjected to administrative wage garnishment at this time.

After one year, Petitioner's financial position may be reviewed again.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: DAVID A. DOUTT.
Docket No. 12-0193.
Decision and Order.
Filed March 21, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On February 6, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-5 on February 10, 2012. The Petitioner was represented by Richard Winkler, J.D. and filed his exhibits (Financial Disclosures, payroll information, and documents from his prior marriage) on February 22, 2012 which I now label as PX-1, 2, and 3 respectively. Mr. Doutt was given 10 additional days after the hearing to file any additional financial information he may wish me to consider, but none have been received.

On February 29, 2012, at the time set for the hearing, both parties were available and participated in the hearing. Ms. Michelle Tanner represented RD. Mr. Winkler represented Mr. Doutt. The parties were sworn. During the hearing, Mr. Doutt stated he has been employed for more than one year. He also stated that he has remarried and is divorced from Betsy Doutt who was the co-borrower on the RD loan. I performed a Financial Hardship Calculation based upon the financial statements provided by Mr. Doutt under oath which include the income of both himself and his current wife, Mary, as well as expenses for both.

There was a prior hearing involving Mr. Doutt with a Initial Decision rendered by Administrative Law Judge Victor W. Palmer on August 25, 2010 in Docket No. 10-0268. In that decision, the amount of debt was determined to be $19,176.72 and the potential fees from Treasury for collection to be $5,369.48.

Mr. Doutt raised the issue of financial hardship. I performed a Financial Hardship calculation based upon the financial statements he provided in PX- 1 & 2.[1] Mr. Doutt's payroll statements showed that he may sometimes receive overtime pay rates. I calculated his non-overtime gross wages for a 40 hour week. Mary Doutt's wages were provided as gross wages only. I utilized tax rates for Federal and State tables to compute the expected Federal and State income taxes for the family unit. I applied all of the calculated Federal and State taxes for the family unit against Mr. Doutt's income.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. The prior hearing in AWG Docket No. 10-0268 determined the amount of debt to be due as $19,176.72 and the "remaining Potential fees" from Treasury are $5,369.48.

2. There have been no payments or credits applied to the debt. Narrative.

[1] The Financial Hardship calculation is not posted on the OALJ website.

3. Mr. Doutt has been employed for more than one year. PX-1.

4. Petitioner raised the issue of Financial Hardship.

5. A Financial Hardship calculation on the family unit income and expenses using the prescribed parameters resulted in an allowable monthly garnishment of $211.43 of Mr. Doutt's monthly income.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $19,176.72 exclusive of potential Treasury fees for the mortgage loan extended to him.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $5,369.48.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Petitioner is subject to administrative garnishment of his wages at the rate of $211.43 per month.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment of $211.43 per month at this time.

After one year, Petitioner's financial position may be reviewed again.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: SHEILA ROGERS.
Docket No. 12-0198.
Decision and Order.
Filed March 21, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James. P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On February 16, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-6 on February 14, 2012. The Petitioner filed her 4 page financial statement on March 5 and a follow-up on March 12, 2012 (which I now label as PX-1 and PX-2, respectively). On February 20, 2012, at the time re-set for the hearing, both parties were available for the hearing. Ms. Michelle Tanner represented RD. Ms. Rogers was available and represented herself. The parties were sworn. Petitioner has been employed at her current job since mid-December 2011. She qualified for Arkansas State unemployment benefits between her current job and her prior employment.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

ADMINISTRATIVE WAGE GARNISHMENT ACT

Findings of Fact

1. On December 22, 1995, Petitioner obtained a loan for the purchase of a primary home mortgage loan in the amount of $42,500.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase her home on a property located in Lamar, AK 728##[1]. RX-1.

2. The Borrower became delinquent. The loan was accelerated for foreclosure on August 6, 2003. Narrative, RX-2.

3. Prior to the foreclosure sale, borrower entered into a "short sale." USDA RD received $40,417.80 from the short sale proceeds. Narrative, RX-5 @ page 11 of 14.

4. The loan balance for the RD loan prior to the short sale was $41,069.14 for principal, plus $4,426.44 for accrued interest, plus $1,535.89 for fees, plus $166.30 for interest on fee balance, plus $965.46 for a (negative) escrow balance for a total of $48,163.23. Narrative, RX-6 @ p. 1 of 4.

5. After the sale proceeds were applied to the debt, the total remaining debt was $7,745.43. Narrative, RX-6 @ p. 1 of 4.

6. The remaining potential fees from Treasury are $2,323.63. RX-6 @ p. 1 of 4.

7. Following her most recent term of involuntary unemployment, Ms. Rogers has been employed since mid-December 2011.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $7,745.43 exclusive of potential Treasury fees for the mortgage loan extended to her.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $2,323.63.

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[1] The complete address is maintained in USDA files.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is **not** entitled to administratively garnish the wages of the Petitioner at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After nine months, RD may re-assess the Petitioner's financial position.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: NIKI ATHERTON.
Docket No. 12-0228.
Decision and Order.
Filed March 22, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

FINAL DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the February 7, 2012 petition of Niki Atherton ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Treasury ("Treasury") through the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"), and if established, the propriety of imposing administrative wage garnishment. By Order

issued on February 29, 2012, the parties were directed to submit and exchange information and documentation concerning the existence of the debt and the matter was set for a telephonic hearing. Respondent filed a Narrative, together with supporting documentation on February 27, 2012. (RX-1 through RX-4). Petitioner did not file a Consumer Debtor Financial Statement or other submission.

Following Petitioner's request for a brief continuance, I conducted a telephone hearing on March 20, 2012. Respondent was represented by Michelle Tanner who testified on behalf of the RD agency. Petitioner, acting as her own representative, testified. Petitioner acknowledged receipt of Respondent's narrative and exhibits.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered:

Findings of Fact

1. On June 27, 2000, Petitioner obtained a direct loan from USDA-RD in the amount of $61,747.00 for the purchase of real property in Ferris, TX, as evidenced by an executed promissory note. RX-1.

2. On May 27, 2009, the loan was accelerated due to monetary default, and foreclosure action ended with the property reverting to USDA-RD upon foreclosure sale on September 7, 2010 at the cost of $36,300.00. RX-2; RX-4.

3. At the time of the foreclosure sale, the amount due on Petitioner's loan account, including principal, interest, fees and protective advances was $89,909.50. RX-3.

4. The amount due on the account after credits for the proceeds from the sale and other credits was $53,725.23. RX-6.

5. USDA-RD sent an offer to compromise the debt to Petitioner, but Petitioner did not receive the documents in the mail. RX-5.

6. The balance on the account was established as a debt and referred to the Department of Treasury ("Treasury") for collection, as required by law on June 5, 2011. RX-6.

7. Petitioner credibly testified regarding her current financial condition and her support of three minor children.

8. In determining whether wage garnishment would constitute a hardship, I considered Petitioner's sworn testimony and Treasury Standard Form SF 329C (Wage Garnishment Worksheet).

Conclusions of Law

1. Petitioner is indebted to USDA's Rural Development program in the amount of $53,725.23, exclusive of potential fees due to Treasury amounting to $15,043.06.

2. All procedural requirements for administrative wage garnishment set forth in 31 C.F.R. §285.11 have been met.

3. Petitioner's request for a hearing regarding wage garnishment was timely filed.

4. Wage garnishment would constitute a hardship to Petitioner.

5. USDA-RD may NOT administratively garnish Petitioner's wages.

6. Petitioner is advised that if she acquires the ability to negotiate a lump sum payment, she may be able to enter into a separate compromise settlement of the debt with the representatives of Treasury.

7. Petitioner is further advised that such an agreement may lower anticipated fees for collecting the debt. In addition, Petitioner may inquire about whether she may enter into an arrangement to make installment payments to Treasury in lieu of garnishment.

8. Pursuant to prevailing law, USDA-RD has no authority to compromise a debt which has been referred to Treasury for collection.

9. The toll free number for Treasury's agent is **1-888-826-3127**.

10. Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner, including income tax refunds.

11. Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

ORDER

1. Administrative wage garnishment would constitute a hardship and may NOT be undertaken.

2. Treasury may continue to collect the debt through offset of any funds due to Petitioner from the United States.

3. Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf at Treasury, notice of any change in her address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: KASSIE HOGAN.
Docket No. 12-0229.
Decision and Order.
Filed March 23, 2012.

AWG.

Robert N. Johnson, III, Esq. for Petitioner.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On February 28, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-11 on February 6, 2012. The Petitioner filed her 4 page financial statement (under oath) and documents related to her divorce from co-signor, Kendall Hogan (which I now label as PX-1, PX-2, respectively) on March 9, 2012. On March 15, 2012, at the time set for the hearing, both parties were available. Ms. Michelle Tanner represented RD. Ms. Hogan was represented by Robert N. Johnson, III, Esq. The parties were sworn.

Petitioner has been employed at her current job for more than one year. Ms. Hogan raised the issue of Financial Hardship. I note that Ms. Hogan lives very modestly.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On September 30, 2005, Petitioner and her then husband, Kendall Hogan, obtained a loan for the purchase of a primary home mortgage loan in the amount of $51,500.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase their home on a property located in Fort Madison, IA 728##[1]. RX-2.

[1] The complete address is maintained in USDA files.

2. At the same time, the borrowers signed RD form 1980-21 (Loan Guarantee). RX-1 @ p. 2 of 5.

3. The Borrowers became delinquent. The loan was accelerated for foreclosure on April 15, 2009. Narrative.

4. At the foreclosure sale of December 2, 2009, Central Mortgage Company purchased the home for $57,118.03. Central Mortgage Company then listed the home for re-sale on December 16, 2009 for $45,000. It was subsequently re-sold for $43,000 on July 15, 2010 to a third party. Narrative, RX-7 @ page 2 of 4.

5. The borrowers owed $65,908.67 to pay off the RD loan. Narrative.

6. USDA RD paid Central Mortgage Company in the amount of $21,647.00 for their loss under the loan guarantee program. Narrative, RX-10 @ p. 4 of 6.

7. The remaining amount due of $21,647.00 was transferred to Treasury for collection on September 14, 2011.

8. Treasury has collected a net $204.84 from the borrowers bringing the amount now due to $21,486.98. RX-11 @ p. 1 of 4.

9. The potential Treasury collection fees are $6,016.36. RX-11 @ p. 2 of 4.

10. Ms. Hogan has been employed for more than one year.

Conclusions of Law

1. Petitioner is jointly and severally indebted to USDA Rural Development in the amount of $21,486.98 exclusive of potential Treasury fees for the mortgage loan extended to her.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $6,016.36.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. I performed a Financial Hardship Calculation utilizing Ms. Hogan's financial statement.[2]

5. The Respondent is **not** entitled to administratively garnish the wages of the Petitioner at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After one year, RD may re-assess the Petitioner's financial position.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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[2] The Financial Hardship Calculation is not posted on the OALJ website.

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In re: JENNIFER LEE.
Docket No. 12-0197.
Decision and Order.
Filed March 28, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order for Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Jennifer Lee ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"); and if established, the propriety of imposing administrative wage garnishment. On January 13, 2012, Petitioner requested a hearing. By Order issued February 15, 2012, a hearing was scheduled to commence on March 6, 2012, and the parties were directed to provide information and documentation to the Hearing Clerk for the Office of Administrative Law Judges for the United States Department of Agriculture.

On February 14, 2012, Respondent filed a Narrative, together with supporting documentation ("RX-1 through RX-11"). On March 7, 2012, Petitioner's attorney entered an appearance and filed a Consumer Debtor Financial Statement, together with supporting documentation ("PX-1"). In addition, counsel for Petitioner requested a continuance of the hearing scheduled for March 6, 2012.

The request for continuance was granted and the hearing was rescheduled for March 13, 2012, at which time Jason Ravnsborg, Esq. represented Petitioner and Michelle Tanner of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri, represented Respondent. I held the record open to allow the submission of additional exhibits and argument. On March 23, 2012, Petitioner filed a brief and exhibits identified as EX 1 through EX-9.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law, and Order shall be entered:

Findings of Fact

1. On January 12, 2007, the Petitioner[1] received a home mortgage loan in the amount of $64,900.00 from lender South Dakota Housing Development ("Lender") for the purchase of real property located in Marion, South Dakota, evidenced by Promissory Note. RX-2.

2. Before executing the promissory note for the loan, on November 28, 2006, Petitioner requested a Single Family Housing Loan Guarantee from the USDA-RD, which was granted. RX-1.

3. By executing the guarantee request, Petitioner certified that she would reimburse USDA RD for the amount of any loss claim on the loan paid to the Lender or its assigns. RX-1.

4. The loan fell into default and when a short sale failed, a foreclosure sale was noticed. RX-3; RX-4; EX-1, attached to Petitioner's brief.

5. The Lender acquired the property upon a bid for the full amount due on the loan, $72,924.39. RX-5; EX-1, attached to Petitioner's brief.

6. The Lender warranted to the Court that no deficiency existed on the loan. EX-3, attached to Petitioner's brief.

7. On June 29, 2009, the South Dakota District Court issued a judgment and decree of foreclosure specifically stating that Plaintiff (the Lender) did not seek a deficiency. EX-2, attached to Petitioner's brief.

8. On July 16, 2009, the Sheriff of Turner County filed a certificate of sale of the property for $72,924.39 with no deficiency. EX-3, attached to Petitioner's brief.

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[1] Petitioner's former husband also executed the promissory note, but the instant proceeding involves Petitioner only, and therefore, references to the transactions involved herein shall be made solely to her.

9. On September 28, 2009, the Sheriff of Turner County filed a Sheriff's Deed with the Court. RX-5; EX-4, attached to Petitioner's brief.

10. On October 9, 2009, Lender filed a Satisfaction of Judgment with the Court, specifically providing that the judgment was fully satisfied. EX-5 and EX-6, attached to Petitioner's brief.

11. On February 26, 2010, Lender sold the property to a third party for $34,800.00. RX-7.

12. At the time of that sale, the amount due on Petitioner's loan was $73,211.16, plus fees and costs of foreclosure and sale for a total due of $80,407.69. RX-9.

13. After application of the sale proceeds, Lender presented USDA-RD with a loss claim of $41,509.10, which USDA-RD paid. RX-7; RX-8.

14. On May 10, 2011, the account was referred to the U.S. Department of Treasury ("Treasury") for collection, in the amount of $37,643.10 plus potential additional fees of $10,540.06. RX-10; RX-11.

15. Petitioner's 2010 federal income tax refund in the amount of $3,883.00 was intercepted by Treasury and applied to the debt. RX-11; EX-8, attached to Petitioner's brief.

16. Petitioner was advised of intent to garnish her wages to satisfy the indebtedness.

17. Petitioner timely requested a hearing, which was held on March 13, 2012.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. The Lender failed to follow the law of South Dakota by establishing the existence of a deficiency at the time of the foreclosure sale. EX-9 attached to Petitioner's brief.

3. All notices to Petitioner from Lender and the Court entering judgment establish that Lender deemed Petitioner's debt to be satisfied.

4. Petitioner should not be held responsible for USDA-RD's failure to exercise due diligence when paying an unsubstantiated deficiency which was not duly established in law.

5. Respondent has failed to establish the existence of a valid debt from Petitioner to USDA-RD.2

6. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have not been met because Respondent has failed to establish the existence of a valid debt.

7. Petitioner's account at Treasury should be abolished and canceled.

8. Petitioner's 2010 federal income tax refund in the amount of $3,883.00 was improperly offset and must be returned to her.

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[2] It is clear that USDA-RD would be able to pursue an action against the Lender for the payment of a deficiency which the Lender warranted did not exist.

9. Respondent is not entitled to administratively garnish the wages of the Petitioner.

10. Treasury has no authority to undertake any collection action as Petitioner is not indebted to the United States.

ORDER

For the foregoing reasons, the wages of Petitioner shall **NOT** be subjected to administrative wage garnishment at this time.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

_____

In re: MARIA SARRIA.
Docket No. 12-0225.
Decision and Order.
Filed April 4, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Maria Sarria ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the U.S. Department of Agriculture, Rural Development ("USDA-RD"; "Respondent"), and if established, the propriety of imposing administrative wage garnishment. By Order issued on February 23, 2012, the parties were directed to file and exchange information and documentation and the matter was set for a hearing to commence by telephone on March 20, 2012.

On March 2, 2012, Respondent filed a Narrative, together with supporting documentation, identified as exhibits RX-1 through RX-6. On March 12, 2012 Petitioner filed a narrative and supporting documents, identified herein as PX-1.

The hearing was held as scheduled, and the documents of both parties were admitted to the record. Testimony was given by Respondent's representative, Michelle Tanner, of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri, and by Petitioner. I instructed Petitioner to file additional documentary evidence regarding her income in the form of W-2 tax forms and pay stubs and held the record open for receipt of those documents by not later than March 30, 2012. On March 29, 2012, Petitioner faxed correspondence directly to me, and not to the Hearing Clerk, which informed me that her car had been vandalized[1]. That document is hereby identified as PX-1 and is hereby admitted to the record. Petitioner also noted that she had "not received mail from [me] yet." As of the date that this Decision and Order was issued, no additional documents have been filed by Petitioner.

On the basis of the entire record before me, the following Findings of Fact and Conclusions of Law and Order will be entered:

Findings of Fact

1. On February 1, 1995, Petitioner obtained a loan from USDA-RD in the amount of $110,000.00 to finance the purchase of property on St. Thomas, Virgin Islands, evidenced by a Promissory Note and Real Estate Mortgage. RX 1.

2. Shortly after this transaction, St. Thomas experienced a devastating hurricane which impacted real property values.

3. Petitioner's loan was accelerated and foreclosure proceedings were initiated, but on January 27, 1998, the property was sold to a third party for $52,000.00. RX-2; RX-4.

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[1] Petitioner also asserted that the wage garnishment Order was suspended. Petitioner is hereby advised that suspension occurred because of her request for a hearing, and not by any action taken by me.

4. Closing costs in the amount of $10,186.16 were deducted from the sale proceeds, leaving $41,813.85 applied against Petitioner's account, the balance of which was $78,544.97 for principal and interest at the time of the sale.

5. Petitioner testified that additional funds from the Small Business Administration (SBA) were sent to USDA-RD to apply to the account, and USDA-RD has acknowledged this. RD-3. (In addition, since Petitioner fell into default very shortly after taking out the loan, I infer from her account balance at the time of the sale that her account was credited for some funds from SBA.)

6. After the application of the proceeds from the sale of the property, Petitioner's loan account remained in the amount of $36,731.12, plus interest of $3,715.88. RX-2.

7. On March 25, 1999, USDA-RD notified Petitioner by mail that her account was referred to the Internal Revenue Service for offset of tax refunds. RX-5.

8. On April 12, 2002, the debt was referred to the United States Department of Treasury for collection as required by law.

9. Tax refund offsets and wage garnishment actions have reduced the debt to $26,775.77, plus potential fees of $7,497.22. RX-6.

10. Treasury, through its agent, issued a notice to Petitioner of intent to garnish his wages, and Petitioner timely filed a petition for a hearing.

11. Petitioner challenged the validity of the debt and provided some information about the circumstances giving rise to the debt and about her income, including documents showing that the property was sold free of any lien.

12. Petitioner failed to provide the additional information that I had Ordered at the oral hearing on March 20, 2012.

13. Petitioner filed a document asserting that her car was vandalized and that she had no transportation for several days.

14. Petitioner did not ask for additional time to file the required documents.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. The sale of the property with clear title does not demonstrate that USDA-RD provided Petitioner with a satisfaction of the debt.

3. The satisfaction of a lien against real property is not tantamount to a satisfaction of a debt arising from a deficiency between the loan balance and amounts applied against the debt.

4. The balance remaining on Petitioner's account after application of proceeds from the short sale and funds from SBA constitutes a valid debt to the United States.

5. Petitioner is indebted to USDA-RD in the amount of $26,775.77, exclusive of potential Treasury fees for the mortgage loan extended to her.

6. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

7. Petitioner was not entirely forthcoming about her income and failed to provide supporting documents when directed to do so, although she credibly testified that her income fluctuates seasonally.

8. Petitioner credibly testified that she is issued W-2 forms and files tax returns, which is supported by Treasury's offset of refunds to the debt at Treasury for collection.

9. Petitioner asserted that she only learned of this debt upon notice of wage garnishment, but the record establishes that tax refunds had been intercepted in the past to offset the debt.

10. Pursuant to the regulations pertaining to debt collection by wage garnishment, Petitioner's necessary expenses[2] do not exceed her income, as best I can determine from her written statement of income and expenses. See, 31 C.F.R. §§ 900-904; 31 U.S.C. §3717.

11. Petitioner provided no evidence regarding the impact of damage to her vehicle, and since she stated that she "had been without transportation for couple of days", I infer that the financial impact is not permanent or severe. PX-2.

12. The Respondent is entitled to administratively garnish the wages of the Petitioner at the regulatory and statutory maximum, because the evidence fails to establish that garnishment would represent a hardship.

13. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment at this time.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

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[2] Petitioner's income-generating rental home does not qualify as a necessary expense.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in her address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk's Office.

_____

In re: MICHELLE PIEPLOW.
Docket No. 12-0098.
Decision and Order.
Filed April 5, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

1. The hearing by telephone was held on February 1 and 7, 2012. Michelle Pieplow, the Petitioner, also known as Michelle R. Pieplow ("Petitioner Pieplow"), 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 6, plus Narrative, Witness & Exhibit List, were filed on January 4, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner.

4. Petitioner Pieplow's documents filed on February 7, 2012, are admitted into evidence, together with the testimony of Petitioner Pieplow. The documents filed on February 7 include a "Consumer Debtor Financial Statement" signed February 2, 2012; only 3 pages of the 4-page form are filed. Petitioner Pieplow had completed a "Consumer Debtor Financial Statement" signed July 18, 2011, that was submitted with her Hearing Request, which is also admitted into evidence, together with her Hearing Request and all other accompanying documents (filed December 7, 2011).

5. Petitioner Pieplow owes to USDA Rural Development **$17,655.74** (as of December 29, 2011, *see* esp. RX 6, pp. 1, 5, and 6), in repayment of a United States Department of Agriculture Farmers Home Administration loan made in 1994, for a home in Tennessee. The balance is now unsecured ("the debt"). [The loan balance has changed, because garnishment is ongoing; the balance has been reduced.]

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **$17,655.74**, would increase the balance by $5,296.72, to $22,952.46. *See* esp. RX 6, p. 1.

7. The amount Petitioner Pieplow borrowed in 1994 was $55,750.00. RX 1. House payments were made through October 9, 2001 (the next payment due date was November 2001). By the time the home was sold on May 5, 2006, the debt had grown to $72,074.96:

$ 51,375.56 Principal Balance
$ 15,269.71 Interest Balance prior to sale (roughly 4-1/2 years of unpaid interest)
$ 4,816.85 Fee Balance prior to sale (includes unpaid real estate taxes, unpaid insurance premiums, foreclosure costs)
$ 597.84 Interest on Fee Balance
$ 15.00 NSF fee

$ 72,074.96 Total Amount Due prior to sale
=========

RX 6, p. 6 and USDA Rural Development Narrative.

Proceeds from sale of the home reduced the Amount Due by $47,940.00. Interest stopped accruing when sale proceeds were applied on the loan, in 2006. The Amount Due was increased by $450.00 for an administrative cost. Collections from Treasury from August 4, 2006 through December 22, 2011 applied to the debt reduced the debt from $24,584.96 to **$17,655.74** unpaid now (excluding the potential remaining collection fees). *See* RX 6, esp. pp. 2-5, and USDA Rural Development Narrative.

8. Petitioner Pieplow has made excellent progress repaying the loan, but the garnishments have caused her financial hardship. Petitioner Pieplow was on active duty in the military until 2005, and she has a 40% service-connected disability that stems particularly from her cervical spine injury. Petitioner Pieplow works as an HR Analyst for the State of Tennessee, making about $12.00 per hour. Her disposable pay (within the meaning of 31 C.F.R. § 285.11) is about $1,700.00 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.] Petitioner Pieplow is paid twice a month, and she is a single mother with an 18-year old son, who is in college, to support. Petitioner Pieplow's Consumer Debtor Financial Statements shows that her living expenses are reasonable and may exceed her disposable pay. In addition to her living expenses, Petitioner Pieplow is paying delinquent taxes, more credit card debt than she can make minimum payments on, a car payment, and a TitleMax payment. Even with her VA disability payment, garnishment at 15% of Petitioner Pieplow's disposable pay has clearly caused Petitioner Pieplow financial hardship. Petitioner Pieplow's biggest financial stressor was that she was laid off in June 2010 and out of work for half a year, until December 2010.

9. To prevent further hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **5%** of Petitioner Pieplow's disposable pay through May 2015; then **up to 10%** of Petitioner Pieplow's disposable pay beginning June 2015 through May 2018; then **up to 15%** of Petitioner Pieplow's disposable pay thereafter. 31 C.F.R. § 285.11.

10. Petitioner Pieplow is responsible and willing and able to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

11. Garnishment is authorized. *See* paragraphs 8, 9 and 10. I encourage **Petitioner Pieplow and Treasury's collection agency** to **negotiate** the repayment of the debt. Petitioner Pieplow, 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 Pieplow, 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 Pieplow, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

13. Petitioner Pieplow owes the debt described in paragraphs 5, 6 and 7.

14. Garnishment **is authorized**, as follows: through May 2015, garnishment **up to 5%** of Petitioner Pieplow's disposable pay; beginning June 2015 through May 2018, garnishment **up to 10%** of Petitioner Pieplow's disposable pay; and thereafter, garnishment **up to 15%** of Petitioner Pieplow's disposable pay. 31 C.F.R. § 285.11.

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

16. Repayment of the debt may occur through ***offset*** of Petitioner Pieplow's **income tax refunds** or other **Federal monies** payable to the order of Ms. Pieplow.

ORDER

17. Until the debt is repaid, Petitioner Pieplow 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).

18. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment **up to 5%** of Petitioner Pieplow's disposable pay through May 2015. Beginning June 2015 through May 2018, garnishment **up to 10%** of Petitioner Pieplow's disposable pay is authorized; and garnishment **up to 15%** of Petitioner Pieplow'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.

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In re: PATRICIA NICKERSON.
Docket No 12-0076.
Decision and Order.
Filed April 6, 2012.

AWG.

Patricia Nickerson, pro se.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administration Law Judge.

DECISION

ADMINISTRATIVE WAGE GARNISHMENT ACT

1. The hearing by telephone was held on January 31, 2012. Patricia Nickerson, the Petitioner, also known as Patricia L. Nickerson, formerly known as Patricia Chapman ("Petitioner Nickerson"), 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 4, plus Narrative, Witness & Exhibit List, were filed on December 29, 2011, and are admitted into evidence, together with the testimony of Michelle Tanner.

4. Petitioner Nickerson's documents filed on January 31, 2012, are admitted into evidence, together with the testimony of Petitioner Nickerson, together with her Hearing Request and all other accompanying documents (filed November 18, 2011).

5. Petitioner Nickerson owes to USDA Rural Development **$22,742.16** (as of December 27, 2011, *see* esp. RX 4, pp. 2, 3), in repayment of a United States Department of Agriculture Farmers Home Administration loan made in 1993, for a home in Florida. The balance is now unsecured ("the debt"). [The loan balance has changed, because garnishment is ongoing; the balance has been reduced. As will be seen later in this Decision, the balance will increase when amounts taken from Petitioner Nickerson's pay are returned to her.]

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **$22,742.16**, would increase the balance by $6,367.80, to $29,109.96. *See* esp. RX 4, p. 3.

7. The amount Petitioner Nickerson borrowed in 1993 was $41,600.00. RX 1. Petitioner Nickerson testified that her co-borrower passed away 8-10 months after purchase of the home. The loan was accelerated for

foreclosure in 1995. By the time the home was sold on September 9, 1997, the debt had grown to $51,087.75:

$ 40,765.44 Principal Balance prior to sale
$ 6,971.73 Interest Balance prior to sale
$ 3,350.58 Fee Balance prior to sale (includes unpaid real estate taxes, unpaid insurance premiums, foreclosure costs)

$ 51,087.75 Total Amount Due prior to sale
=========

RX 4, p. 1 and USDA Rural Development Narrative.

Proceeds from sale of the home reduced the Amount Due by $28,400.00. RX 4, p. 1 Interest stopped accruing when the home was sold (September 9, 1997). Collections from Treasury applied to the debt as of November 2011 reduced the debt to **$22,742.16** (excluding the potential remaining collection fees). *See* RX 4, and USDA Rural Development Narrative.

8. Petitioner Nickerson is paid every two weeks. Garnishment began with her pay for November 5-18, 2011, and has usually been $80.00 or more every two weeks. When garnishment began, Petitioner Nickerson had not been in her current job for at least 12 months, but garnishment would have been permitted because she was not "involuntarily separated" from her previous job. [Petitioner Nickerson testified that previously, she had served as sole caregiver first to her mother; then served as sole caregiver to her husband who had cancer.] Petitioner Nickerson's Hearing Request was **not late**, however, and for that reason garnishment should not have begun until her hearing was held and a decision reached. Petitioner Nickerson's Hearing Request needed to be received by October 18, 2011. As confirmed by U.S. Postal Service records, Petitioner Nickerson had delivered her Hearing Request to the specified post office box in Birmingham, Alabama at 7:57 a.m. on October 14, 2011. That suffices.

9. Petitioner Nickerson started her current job at Wal-Mart in July 2011. She works about 30 hours per week in the deli, making $9.50 per hour. Petitioner Nickerson has a 10th grade education. Her disposable pay

(within the meaning of 31 C.F.R. § 285.11) is about $1,200.00 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.] Petitioner Nickerson's Consumer Debtor Financial Statement shows that her living expenses are reasonable and exceed her disposable pay. Garnishment at 15% of Petitioner Nickerson's disposable pay has clearly caused Petitioner Nickerson financial hardship. To prevent further hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **0%** of Petitioner Nickerson's disposable pay. 31 C.F.R. § 285.11.

Discussion

10.I recommend that Petitioner Nickerson be granted **a financial hardship discharge** of the debt. Petitioner Nickerson, this will require **you** to telephone Treasury's collection agency after you receive this Decision. To be considered (the decision whether to grant you a financial hardship discharge will be made by Treasury's collection agency), you will be required to provide, timely, all financial documentation requested. The toll-free number for you to call is **1-888-826-3127**. Petitioner Nickerson, if you are not granted a financial hardship discharge (and it is difficult to qualify), 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 Nickerson, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

12.Petitioner Nickerson owes the debt described in paragraphs 5, 6 and 7.

13.Garnishment **is not authorized**, to prevent financial hardship. 31 C.F.R. § 285.11.

14. All amounts already collected through garnishment of Petitioner Nickerson's pay prior to implementation of this Decision, **shall be returned** to Petitioner Nickerson. Petitioner Nickerson's Hearing Request was **not late**, and garnishment should not have begun until her hearing was held and a decision reached.

15. Repayment of the debt may occur through ***offset*** of Petitioner Nickerson's income **tax refunds** or other **Federal monies** payable to the order of Ms. Nickerson.

ORDER

16. Until the debt is repaid, Petitioner Nickerson 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).

17. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment. 31 C.F.R. § 285.11.

18. USDA Rural Development, and those collecting on its behalf, will be required to **return to Petitioner Nickerson** any amounts already collected through garnishment of Petitioner Nickerson's pay, prior to implementation of this Decision.

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

_____

In re: AMY G. ROBERTSON.
AWG Docket No. 12-0099.
Decision and Order.
Filed April 9, 2012.

AWG.

J. Gilbert Parrish, Jr., Esq., for the Petitioner.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

1. Ms. Amy G. Robertson ("Petitioner Robertson"), is represented by J. Gilbert Parrish, Jr., Esq., who participated in the hearing by telephone on both February 1 and February 8, 2012. Petitioner Robertson participated on February 8, 2012.

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, who participated on both February 1 and February 8, 2012.

Summary of the Facts Presented

3. USDA Rural Development's Exhibits RX 1 through RX 7, plus Narrative, Witness & Exhibit List, were filed on January 4, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner.

4. Petitioner Robertson's documents filed on February 6, 2012, are admitted into evidence, together with the testimony of Petitioner Robertson. The documents filed on February 6 include (a) Petitioner's "Consumer Debtor Financial Statement" signed February 3, 2012, which was filed marked as RX 8; I have re-labeled it PX 8, since it is Petitioner's exhibit; (b) the "paystub" from Wal-Mart showing Petitioner's earnings and deductions for a 2-week pay period in late January 2012, which was filed marked as RX 9; I have re-labeled it PX 9; and (c) the summary of Petitioner's life insurance contract which was filed marked as RX 10; I have re-labeled it PX 10. Also admitted into evidence are Petitioner's Hearing Request and accompanying documents (filed December 7, 2011).

5. Petitioner Robertson owes to USDA Rural Development a balance of **$22,872.39** (as of February 7, 2012) in repayment of a United States Department of Agriculture Rural Housing Service loan made in 2007, for a home in Tennessee. The balance is now unsecured ("the debt"). *See* USDA Rural Development Exhibits RX 1 through RX 7, esp. RX 7, plus Narrative, Witness & Exhibit List. [Garnishment began in July 2011 (RX

7, p. 2); the balance may have been further reduced by the time I sign this Decision.]

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **$22,872.39** would increase the current balance by $6,404.27, to $29,276.66. *See* USDA Rural Development Exhibits, esp. RX 7, p. 3, plus testimony of Ms. Tanner.

7. The amount Petitioner Robertson borrowed in 2007 was $71,900.00. RX 1. The loan was accelerated for foreclosure on December 3, 2009. By the time the home was sold for $53,000.00 on September 7, 2010, the debt had grown to $74,629.84.

$ 70,119.40 Unpaid Principal Balance prior to sale
$ 3,284.34 Unpaid Interest Balance prior to sale
$ 1,226.10 Recoverable costs and fees (fees can include unpaid real estate taxes, unpaid insurance premiums), interest on fees, NSF fee and late charge

$ 74,629.84
- 49,431.18 Proceeds from the sale [plus $3,568.82 which paid foreclosing costs]

$ 25,198.66 Total Amount Due
=========

RX 7, p. 1, and USDA Rural Development Narrative.

Interest stopped accruing when the proceeds of sale ($49,431.18), were applied to the debt. Collections from Treasury since then (from Petitioner Robertson, through garnishment, plus ***offset*** of Petitioner Robertson's **income tax refund** intercepted February 7, 2012), leave **$22,872.39** unpaid as of February 7, 2012 (excluding the potential remaining collection fees). *See* RX 7, pp. 2 and 3, and USDA Rural Development Narrative, plus Ms. Tanner's testimony.

8. Petitioner Robertson's interest subsidy was not recaptured. [Even though Petitioner Robertson defaulted, the benefit was not taken away.] RX 4, esp. p. 27, and Ms. Tanner's testimony.

9. Petitioner Robertson stated in her Hearing Request that she "submitted a compromise settlement which was never replied to". Petitioner Robertson did submit her Application. *See* RX 6, pp. 5-9. In response, using the address Petitioner Robertson had supplied on her Application (RX 6, p. 5), USDA Rural Development requested Petitioner Robertson to provide her last 2 consecutive bank statements (checking/savings or both), or a note stating she did not have any bank accounts. RX 6, p. 10. USDA Rural Development did not receive the bank statements or anything in response, so USDA Rural Development submitted the debt to the U.S. Treasury for collection, as required by statute.

10. Petitioner Robertson works full-time for Wal-Mart, making $11.20 per hour, plus an extra dollar for Sunday hours. Her disposable pay (within the meaning of 31 C.F.R. § 285.11) is roughly $1,400.00 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.] 31 C.F.R. § 285.11.

11. Petitioner Robertson's Consumer Debtor Financial Statement does not show all her living expenses. [Her Statement shows no expense for food, no expense for clothing, no expense for insurance on her car; no expense for telephone, no expense for "sundries" or activities of any kind.] Petitioner Robertson testified that she spends about $100.00 per month on food, sometimes more. Petitioner Robertson testified that she cannot afford insurance on her car. Petitioner Robertson testified that she is paying $100.00 per month on one hospital debt and $239.00 per month on another hospital debt. Petitioner Robertson is separated, going through an uncontested divorce.

12. Garnishment at 15% of Petitioner Robertson's disposable pay has caused Petitioner Robertson financial hardship. To prevent further hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **5%** of Petitioner Robertson's disposable pay through May

2014; then **up to 10%** of Petitioner Robertson's disposable pay thereafter. 31 C.F.R. § 285.11.

13. Petitioner Robertson is responsible and able to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

14. Garnishment of Petitioner Robertson's disposable pay is authorized, in limited amount. *See* paragraph 12. Petitioner Robertson, you may want to telephone Treasury's collection agency to **negotiate** the repayment of the debt. Petitioner Robertson, this will require **you** to telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Robertson, 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 Robertson, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

16. Petitioner Robertson owes the debt described in paragraphs 5, 6 and 7.

17. To prevent further financial hardship, garnishment **up to 5%** of Petitioner Robertson's disposable pay is authorized, through May 2014; and **up to 10%** thereafter. 31 C.F.R. § 285.11.

18. **No refund** to Petitioner Robertson of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.

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

ORDER

20. Until the debt is repaid, Petitioner Robertson 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).

21. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment **up to 5%** of Petitioner Robertson's disposable pay through May 2014; and **up to 10%** thereafter. 31 C.F.R. § 285.11.

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

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

_____

In re: KEITH A. TOLLESON.
Docket No. 12-0075.
Decision and Order.
Filed April 10, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

1. The hearing by telephone was held on February 14, 2012. Keith A. Tolleson, full name Keith Allen Tolleson ("Petitioner Tolleson"), participated. The record was held open through March 1, 2012, for

Petitioner Tolleson to file financial information (such as a Consumer Debtor Financial Statement, and a copy of a couple of recent pay stubs, typical of his pay).

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. Petitioner Tolleson owes to USDA Rural Development a balance of **$30,058.35** (as of January 21, 2012) in repayment of a United States Department of Agriculture / Rural Development / Rural Housing loan made in 1995 for a home in Louisiana, the balance of which is now unsecured ("the debt"). *See* USDA Rural Development Exhibits RX 1 through RX 4, especially RX 4, p. 2, plus Narrative, Witness & Exhibit List (filed January 24, 2012), which are admitted into evidence, together with the testimony of Michelle Tanner.

4. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **$30,058.35** would increase the current balance by $8,416.34, to $38,474.69. *See* USDA Rural Development Exhibits, esp. RX 4, p. 4, and the testimony of Michelle Tanner.

5. Between 4 and 5 years after the loan was made, the loan was reamortized, in 1999. RX 1, pp. 4-5. The loan had become delinquent, and reamortization made the loan current, by adding the delinquent amount to the principal balance. The reamortization did not change the total amount owed, which all became principal. The principal amount due on the account became $64,039.44. Petitioner Tolleson was not able to keep the loan current; house payments were made only through January 26, 2000. A Notice of Acceleration and Intent to Foreclose was sent to him on July 6, 2000. RX 2, pp. 1-3.

6. The appraisal in October 2000 showed the current market value of the home to be $30,500.00, which is what the home was sold for, on November 21, 2000. After the realtor commission was subtracted, the

net proceeds from sale of the home, available to apply on the loan, were $28,670.00. RX 3, p. 6.

7. The amount Petitioner Tolleson borrowed in 1995 was $61,280.00. RX 1. By the time the home was sold on November 21, 2000, the debt had grown to $68,563.66:

$ 63,938.02	Principal Balance prior to sale
$ 4,204.14	Interest Balance prior to sale
$ 421.50	Recoverable costs (includes negative escrow, foreclosure fees)
$ 68,563.66	Total Amount Due prior to sale

$ 325.00	Foreclosure fee billed for appraisal
- $ 575.00	Legal fees
- $ 281.19	Insurance
$ 68,032.47	Amount Due

RX 4, p. 1 and USDA Rural Development Narrative and the testimony of Michelle Tanner.

8. Interest stopped accruing when sale proceeds were applied on the loan, in 2000. Proceeds from sale of the home reduced the Amount Due by $28,670.00. Collections from Treasury applied to the debt after collection fees are subtracted have reduced the debt to **$30,058.35** unpaid as of January 21, 2012 (excluding the potential remaining collection fees). *See* RX 4, USDA Rural Development Narrative, and the testimony of Michelle Tanner.

9. Although my Order dated January 25, 2012, required financial disclosure from Petitioner Tolleson, such as filing a Consumer Debtor Financial Statement, he filed nothing. The record was held open following the hearing, and still Petitioner Tolleson filed nothing. Thus I cannot calculate Petitioner Tolleson's current disposable pay.

(Disposable pay 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.)

10. Petitioner Tolleson testified that because he had been required to drive 250-300 miles per day, he had stepped down from his outside sales commission work 6 months before the hearing. Petitioner Tolleson testified that he took home only $304.00 per week after taxes and insurance, for himself and his son. He testified that he has grandchildren, his daughter's children. Without financial documentation, there is insufficient evidence before me to consider the factors under 31 C.F.R. § 285.11. In other words, there is not enough proof that garnishment to repay "the debt" (*see* paragraph 3) in the amount of 15% of Petitioner Tolleson's disposable pay will create a financial hardship.

11. Petitioner Tolleson is responsible and able to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

12. Garnishment of Petitioner Tolleson's disposable pay is authorized. I encourage Petitioner Tolleson and Treasury's collection agency to **negotiate** the repayment of the debt. Petitioner Tolleson, this will require **you** to telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Tolleson, you may want to request apportionment of debt between you and the co-borrower. Petitioner Tolleson, 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 Tolleson, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

14. Petitioner Tolleson owes the debt described in paragraphs 3 through 8.

15. **Garnishment up to 15% of Petitioner Tolleson's disposable pay** is authorized. There is insufficient evidence that financial hardship will be created by the garnishment. 31 C.F.R. § 285.11.

16. **No refund** to Petitioner Tolleson of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.

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

ORDER

18. Until the debt is repaid, Petitioner Tolleson 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).

19. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with **garnishment up to 15% of Petitioner Tolleson's disposable pay**. 31 C.F.R. § 285.11.

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

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

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In re: TIMOTHY S. CAFFERY.
Docket No. 11-0368.
Decision and Order.
Filed April 11, 2012.

AWG.

Clarence B. Meldrum, Jr., Esq., for the Petitioner.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

1. Timothy S. Caffery ("Petitioner Caffery"), represented by Clarence B. Meldrum, Jr., Esq., participated in the teleconference held on October 26, 2011; and the hearing by telephone held on April 10, 2012.

2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent ("USDA Rural Development"). Mary E. Kimball represented USDA Rural Development through the October 2011 portion of the proceeding. USDA Rural Development is now represented by Michelle Tanner, who participated on April 10, 2012.

Summary of the Facts Presented

3. Petitioner Caffery's filings on November 29, 2011 and October 26, 2011 are admitted into evidence, together with the testimony of Petitioner Caffery. These filings include PX 2 (the typed "Consumer Debtor Financial Statement" signed by Petitioner Caffery on October 25, 2011); the Account of assets; the Current Income schedule; the Current Expenditures schedule; and the Scholastic Corporation pay stub. Also admitted into evidence is PX 1 (the letter from the Tallman-Scheel Agency), which was filed on October 24, 2011. Also admitted into evidence are Petitioner Caffery's filings on September 27, 2011, and Petitioner Caffery's Hearing Request and accompanying documents, filed on August 29, 2011.

4. USDA Rural Development's Exhibits RX 1 through RX 9, plus Narrative, Witness & Exhibit List, were filed on September 19, 2011, and are admitted into evidence, together with the testimony of Michelle Tanner.

5. Petitioner Caffery borrowed to buy a home in Nebraska, which he bought in 2004, and borrowed $105,000.00 to pay for it. RX 1, RX 2.

6. Petitioner Caffery owes to USDA Rural Development a balance of **$23,463.11** (as of September 9, 2011) in repayment of the United States Department of Agriculture / Rural Development / Rural Housing Service loan made in 2004 for the home in Nebraska, the balance of which is now unsecured ("the debt"). *See* USDA Rural Development Exhibits RX 1 through RX 9, especially RX 8 and RX 9, plus Narrative, Witness & Exhibit List.

7. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **$23,463.11** would increase the current balance by $6,569.67, to $30,032.78. RX 9.

8. By the time the home was sold in a short sale on November 20, 2006, for $94,000.00 (RX 5, RX 6), the debt had grown to $112,236.69:

$103,688.09 Principal Balance prior to sale
$ 5,704.65 Interest Balance prior to sale
$ 2,767.66Fee Balance prior to sale (includes unpaid taxes and insurance, costs)
$ 76.29 Late Charge

$112,236.69 Total Amount Due prior to sale
=========

RX 8 and USDA Rural Development Narrative.

9. Interest stopped accruing when sale proceeds were applied on the loan, in 2006. Proceeds from sale of the home reduced the Amount Due by $84,630.58. Collections from Treasury applied to the debt after collection fees are subtracted have reduced the debt to **$23,463.11** unpaid as of September 9, 2011 (excluding the potential remaining collection fees). RX 8.

10. ***Offsets*** in 2008 and 2011, mostly federal income tax refunds, reduced the balance by $4,143.00 after the short sale. RX 8, p. 2. In addition to ***offsets***, garnishment up to 15% of Petitioner Caffery's disposable pay can occur unless he cannot withstand garnishment in that amount without hardship. 31 C.F.R. § 285.11. Petitioner Caffery's disposable pay is roughly $1,800.00 per month. (Disposable pay 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.) Although garnishment at 15% of Petitioner Caffery's disposable pay could yield roughly $270.00 per month in repayment of the debt, he cannot withstand garnishment in that amount without financial hardship. Petitioner Caffery has a 7 year-old child to support. Petitioner Caffery understated the expense of caring for his child on his Consumer Debtor Financial Statement. Petitioner Caffery's reasonable and necessary living expenses, including his child's requirements, consume his disposable pay. Petitioner Caffery's disposable pay (within the meaning of 31 C.F.R. § 285.11) does **not** currently support garnishment and **no** garnishment is authorized. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 6) must be limited to **0%** of Petitioner Caffery's disposable pay, through May 2017. Beginning in June 2017, garnishment **up to 15%** of Petitioner Caffery's disposable pay is authorized.

11. Petitioner Caffery is responsible and able to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

12. Garnishment of Petitioner Caffery's disposable pay is **not** authorized, through May 2017. *See* paragraph 10. Petitioner Caffery, you may want to telephone Treasury's collection agency to **negotiate** the repayment of the debt. Petitioner Caffery, this will require **you** to telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Caffery, 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 Caffery, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

14. Petitioner Caffery owes the debt described in paragraphs 5 through 9.

15. **No garnishment** of Petitioner Caffery's disposable pay is authorized, through May 2017. Beginning in June 2017, garnishment **up to 15%** of Petitioner Caffery's disposable pay is authorized. 31 C.F.R. § 285.11.

16. **No refund** to Petitioner Caffery of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.

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

ORDER

18. Until the debt is repaid, Petitioner Caffery 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).

19. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment **through May 2017**. **Beginning in June 2017**, garnishment **up to 15%** of Petitioner Caffery's disposable pay is authorized. 31 C.F.R. § 285.11.

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

In re: PAMELA J. BUSH.
Docket No. 12-0116.
Decision and Order.
Filed April 11, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

1. The hearing by telephone was held on February 1 and 9, 2012. Pamela J. Bush, the Petitioner, formerly known as Pamela J. Brandt ("Petitioner Bush"), 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. Petitioner Bush's documents filed on January 26, 2012, are admitted into evidence, together with the testimony of Petitioner Bush. The documents filed on January 26 include a "Consumer Debtor Financial Statement" signed January 26, 2012, with accompanying documents. Also admitted into evidence is Petitioner Bush's Hearing Request filed on December 20, 2011, and accompanying documents, including Petitioner Bush's letter dated November 16, 2011; and Kyle B. Smith, Esq.'s letter dated 27 April 2007.

4. USDA Rural Development's Exhibits RX 1 through RX 7, plus Narrative, Witness & Exhibit List, were filed on January 5, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner.

5. Petitioner Bush owes to USDA Rural Development **$15,637.13** (as of December 29, 2011, *see* esp. RX 7), in repayment of a United States Department of Agriculture Rural Development Rural Housing Service loan made in 2003, for a home in Ohio. The balance is now unsecured ("the debt").

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **$15,637.13**, would increase the balance by $4,378.40 to $20,015.53. *See* esp. RX 7, p. 3.

7. Petitioner Bush also borrowed $19,000.00 to buy the home, through Portage Area Development Corporation, which was the first lien holder. RX 2. The amount Petitioner Bush borrowed from USDA Rural Development in 2003 was $75,426.00. RX 1. Petitioner Bush was not able to keep the loans current; foreclosure proceedings began. The home was sold for $94,100.00, in a short sale, on or about March 31, 2006, prior to a foreclosure sale taking place. USDA Rural Development Narrative.

8. Sale proceeds went first to the first lien holder. The first lien holder required $36,355.00 for payoff, closing costs and termite repair. USDA Rural Development received the remaining funds of $57,745.00. USDA Rural Development Narrative.

9. A Notice of Acceleration and Intent to Foreclose was sent to Petitioner Bush on March 28, 2006, by USDA Rural Development. RX 3, pp. 4-6. When USDA Rural Development received the remaining funds of $57,745.00 on April 4, 2006, the USDA Rural Development debt was $74,354.15:

$ 71,809.14 Principal Balance
$ 1,392.90 Interest Balance prior to sale
$ 1,152.11 Fee Balance prior to sale (includes unpaid real estate taxes, unpaid insurance premiums, late charge)

$ 74,354.15 Total Amount Due when sale funds received were applied on the loan
=========

RX 6, p. 4 and USDA Rural Development Narrative.

The remaining sale funds of $57,745.00 were applied to the Amount Due. Interest stopped accruing when remaining sale funds were applied on the loan, in April 2006. The Amount Due was decreased also by $473.89 for an Escrow Balance. RX 6, p. 4. The Amount Due was increased by $225.00 for a Fee billed after posting. RX 4, p. 8; RX 7, p. 1. Collections from Treasury in 2008 and 2011 applied to the debt reduced the debt from $16,360.26 to **$15,637.13** unpaid as of December 29, 2011

(excluding the potential remaining collection fees). *See* RX 7 and USDA Rural Development Narrative.

10. There was debt settlement negotiation after the remaining sale funds had been applied on the loan. Petitioner Bush offered to pay $500.00. Her offer is found at RX 5, pp. 4-22. That offer was received on May 15, 2006. USDA Rural Development promptly sent Petitioner Bush a counter-offer of $12,300.00 payable over 60 months at $205.00 per month. That counter-offer was dated May 18, 2006. RX 5, p. 23. Petitioner Bush did not accept the counter-offer. USDA Rural Development was required by statute to transfer the debt to the U.S. Treasury and did so on or about July 5, 2006. RX 4, p. 5. Thus any offer Petitioner Bush may have wanted to make after about July 5, 2006 could no longer be considered by USDA Rural Development; it was too late. The entry dated July 17, 2006 (RX 4, p. 5; RX 4, p. 8) indicates Petitioner Bush was advised to contact Treasury and given the phone number. *See also* the summary contained in a Memo dated October 3, 2006, found at RX 6, p. 5.

11. Petitioner Bush is working, and her husband (who is not responsible to repay the loan) is an unemployed teacher who may be going back to school. Petitioner Bush works as a school custodian. Her disposable pay (within the meaning of 31 C.F.R. § 285.11) is about $2,000.00 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.] Petitioner Bush and her husband live with other family members (6 adults and a baby, altogether) and pay for utilities and about 90% of the groceries, since a brother-in-law pays the mortgage. In addition to their monthly living expenses, they are repaying considerable debt, including student loans; car payments; $413.00 per month on 9 credit cards together; and other debt. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **5%** of Petitioner Bush's disposable pay through May 2013; then **up to 10%** of Petitioner Bush's disposable pay beginning June 2013 through May 2016; then **up to 15%** of Petitioner Bush's disposable pay thereafter. 31 C.F.R. § 285.11.

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

Discussion

13. Garnishment is authorized, in limited amount. *See* paragraph 11. Petitioner Bush, you may want to telephone Treasury's collection agency to **negotiate** the repayment of the debt. Petitioner Bush, 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 Bush, 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 Bush, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

15. Petitioner Bush owes the debt described in paragraphs 5 through 9.

16. **Garnishment is authorized**, as follows: through May 2013, garnishment **up to 5%** of Petitioner Bush's disposable pay; beginning June 2013 through May 2016, garnishment **up to 10%** of Petitioner Bush's disposable pay; and thereafter, garnishment **up to 15%** of Petitioner Bush's disposable pay. 31 C.F.R. § 285.11.

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

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

ORDER

19. Until the debt is repaid, Petitioner Bush 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).

20. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment **up to 5%** of Petitioner Bush's disposable pay through May 2013. Beginning June 2013 through May 2016, garnishment **up to 10%** of Petitioner Bush's disposable pay is authorized; and garnishment **up to 15%** of Petitioner Bush'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.

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In re: MICHELLE MORGAN.
Docket No. 12-0257.
Decision and Order.
Filed April 12, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Michelle Morgan ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"); and if established, the propriety of imposing administrative wage garnishment. On February 23, 2012, Petitioner requested a hearing before the Office of Administrative Law Judges ("OALJ").

A hearing was scheduled to commence on April 11, 2012, and the parties were directed to provide information and documentation to the Hearing Clerk for the Office of Administrative Law Judges for the United States Department of Agriculture ("Hearing Clerk"). Respondent filed a Narrative, together with supporting documentation ("RX-1 through RX-8"). Petitioner filed a Consumer Debtor Financial Statement ("PX-1").

The hearing commenced as scheduled, at which time Petitioner represented herself and Michelle Tanner of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri, represented Respondent.
On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law, and Order shall be entered:

Findings of Fact

1. On November 26, 2008, the Petitioner received a home mortgage loan in the amount of $106,040.00 from lender First Bank ("Lender") for the purchase of real property located in Clewiston, Florida, evidenced by Promissory Note. RX-1.

2. Before executing the promissory note for the loan, on April 14, 2006, Petitioner requested a Single Family Housing Loan Guarantee from the USDA-RD, which was granted. RX-1.

3. By executing the guarantee request, Petitioner certified that she would reimburse USDA RD for the amount of any loss claim on the loan paid to the Lender or its assigns. RX-1.

4. The loan fell into default and a foreclosure sale was held on May 26, 2010, at which time the Lender acquired the property. RX-2; RX-3; RX-4.
5. The Lender listed the property for sale and accepted an offer of $65,000.00. RX 5; RX-7.

6. At the time of that sale, the amount due on Petitioner's loan was $124,890.99, comprised of principal, interest, fees, and costs of foreclosure and sale. RX-6.

7. USDA-RD credited the account with $68,623.93, and paid the Lender a loss claim of $56,267.06. RX-6.

8. On January 9, 2012, the account was referred to the U.S. Department of Treasury ("Treasury") for collection, in the amount of $56,267.06 plus potential additional fees of $15,754.78. RX-8.

9. Petitioner was advised of intent to garnish her wages to satisfy the indebtedness.

10. Petitioner timely requested a hearing.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Respondent USDA-RD has established the existence of a valid debt from Petitioner to USDA-RD.

3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

4. Wage garnishment would constitute a hardship to Petitioner at this time, as she is the sole source of income for her and her dependent child. Treasury may review Petitioner's circumstances in five years to determine whether hardship continues.

5. USDA-RD/Treasury may NOT administratively garnish Petitioner's wages.

6. Petitioner is advised that if she acquires the ability to negotiate a lump sum payment, she may be able to enter into a compromise settlement of the debt with the representatives of Treasury.

7. Petitioner is further advised that such an agreement may lower anticipated fees for collecting the debt. In addition, Petitioner may inquire about whether she may enter into an arrangement to make installment payments to Treasury in lieu of garnishment.

8. Pursuant to prevailing law, USDA-RD has no authority to compromise a debt which has been referred to Treasury for collection.

9. The toll free number for Treasury's agent is **1-888-826-3127**.

10. Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner, including income tax refunds.

11. Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

ORDER

1. Administrative wage garnishment would constitute a hardship and may NOT be undertaken.

2. Treasury may continue to collect the debt through offset of any funds due to Petitioner from the United States.

3. Treasury may review Petitioner's financial condition in five (5) years to determine whether hardship continues.

4. Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf at Treasury, notice of any change in her address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: ALLEN McDONALD.
Docket No. 12-0260.
Decision and Order.
Filed April 12, 2012.

AWG.

Petitione,r pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Allen McDonald ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"); and if established, the propriety of imposing administrative wage garnishment. On February 24, 2012, Petitioner requested a hearing before the Office of Administrative Law Judges ("OALJ").

By Order issued March 15, 2012, a hearing was scheduled to commence on April 12, 2012, and the parties were directed to provide information and documentation to the Hearing Clerk for the Office of Administrative Law Judges for the United States Department of Agriculture ("Hearing Clerk"). Respondent filed a Narrative, together with supporting documentation ("RX-1 through RX-9").

The hearing commenced as scheduled, at which time Petitioner represented himself and Michelle Tanner of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri, represented Respondent.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law, and Order shall be entered:

Findings of Fact

ADMINISTRATIVE WAGE GARNISHMENT ACT

1. On September 21, 2007, the Petitioner received a home mortgage loan in the amount of $31,414.00 from lender JP Morgan Chase Bank ("Lender") for the purchase of real property located in Attica, Indiana, evidenced by Promissory Note. RX-2.

2. Before executing the promissory note for the loan, on August 9, 2007, Petitioner requested a Single Family Housing Loan Guarantee from the USDA-RD, which was granted. RX-1.

3. By executing the guarantee request, Petitioner certified that he would reimburse USDA RD for the amount of any loss claim on the loan paid to the Lender or its assigns. RX-1.

4. The loan fell into default and Petitioner abandoned the house to the Lender, which instituted foreclosure proceedings. RX-3.

5. At foreclosure sale held on November 10, 2009, the Lender's assignee Homesales Inc. acquired the property for a bid of $38,615.91. RX-3.

6. The Lender listed the property for sale and sold the property to a third party on February 24, 2010 for $10,000.00. RX 4; RX-5.

7. At the time of the sale, the amount due on Petitioner's loan was $48,812.25, comprised of principal, interest, fees, and costs related to the foreclosure and sale. RX-8.

8. USDA-RD paid JP Morgan Chase $28,197.82 as a loss, leaving a balance on Petitioner's account of $28,197.82, which was referred to the U.S. Department of Treasury ("Treasury") for collection on May 16, 2011. RX-7; RX-9.

9. Petitioner was advised of intent to garnish his wages to satisfy the indebtedness, and wages were garnished.

10. Petitioner's request for a hearing was not timely.

11. After application of amounts collected through wage garnishment, Petitioner's debt now stands at $27,344.94.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Respondent USDA-RD has established the existence of a valid debt from Petitioner to USDA-RD.

3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

4. Upon consideration of all of the testimonial and documentary evidence, I find that wage garnishment would constitute a hardship[1] to Petitioner.

5. Because the debt is valid, I find it appropriate that all past amounts collected through garnishment should remain debited to Petitioner's account at Treasury.

6. USDA-RD/Treasury may NOT administratively garnish Petitioner's wages.

7. Petitioner is advised that only Treasury has authority to compromise the amount of the debt, and that he may be able to negotiate settlement of the debt with the representatives of Treasury.

8. Petitioner is further advised that such an agreement may lower anticipated fees for collecting the debt.

9. The toll free number for Treasury's agent is **1-888-826-3127**.

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[1] At the oral hearing, I had not had sufficient opportunity to review the financial information relative to Petitioner's disposable income, and had thought that he could sustain a small percentage of garnishment. A closer review of the financial evidence leads me to conclude that garnishment would constitute a hardship.

10. Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner, including income tax refunds.

11. Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

ORDER

1. Administrative wage garnishment would constitute a hardship and may NOT be undertaken.

2. Treasury may continue to collect the debt through offset of any funds due to Petitioner from the United States.

3. Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf at Treasury, notice of any change in his address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: SCOTTIE BYRD.
Docket No. 12-0095.
Decision and Order – Revised.
Filed April 13, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

REVISED DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On January 6, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-10 on January 6, 2012. During the hearing, I granted Mr. Byrd a limited period of time to file any documentation of financial hardship. Mr. Byrd filed his financial information including his most recent pay stub post-hearing on March 22, 2012 and further claified his financial statement on April 12, 2012 which I now label as PX-1 thru PX-3, respectively. I prepared a Financial Hardship Calculation based upon his financial statements and pay stub.[1]

On February 2, 2012, at the time set for the hearing, Mr. Byrd was not originally available for the telephone conference. He did call in one hour later. Both parties then participated in the hearing. Ms. Michelle Tanner represented RD and was present for the telephone conference. Mr. Byrd was available and represented himself. The parties were sworn.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On December 23, 2003, Petitioner obtained a loan for the purchase of a primary home mortgage loan in the amount of $68,512.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase his home on a property located in 1## Ever*** Dr., Inman, SC 293##[2]. RX-3.

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[1] The Financial Hardship calculation is not posted on the OALJ website.
[2] The complete address is maintained in USDA files.

2. On/about the same time, the borrower signed RD Form 1980-21 (A Loan Guarantee). RX-1 @ p. 2 of 4.

3. The Borrower became delinquent. The loan was accelerated for foreclosure on April 22, 2005. RX-8 @ p. 5 of 10.

4. A foreclosure sale was ordered on June 29, 2005. Narrative. RX-6 @ p. 1 of 3.

5. JP Morgan Chase (Chase) acquired the property for $56,100 on August 1, 2005. Narrative, RX-8 @ p 5 of 10.

6. Chase had the property appraised at $62,000 on September 1, 2005 and then obtained a Broker's Price Opinion (BPO) at $47,000 on September 6, 2005. RX-8 @ p. 5 of 10.

7. The property was originally listed for $63,000.00 on September 16, 2005 and then re-listed for $55,000 on January 9, 2006. RX-8 @ p. 6 of 10.

8. When the property did not sell, RD credited Chase the Liquidation Value Appraisal of $52,000 on January 28, 2006. RX-8 @ p. 6 of 10.

9. The principal loan balance for the RD loan prior to the foreclosure was $67,877.34, plus $5,475.75 for accrued interest, plus $70.19 for additional interest for a total of $73,423.28. Narrative, RX-8 @ p. 8 of 10.

10. Chase was credited $43,176.10 as the estimated proceeds from the Collateral. RX-8 @ p. 8 of 10.

11. After the loss claims were paid to Chase, the net loss Amount is $29,250.31. Narrative, RX-8 @ p. 9 of 10.

12. Treasury has not collected any monies as a result of its off-set program. Narrative, RX- 10 @p. 1 of 3.

13. The remaining unpaid debt is in the amount of $29,250.31 - exclusive of potential Treasury fees. Narrative.

14. The remaining potential fees from Treasury are $8,775.09. RX-10 @ p. 2 of 3.

15. Mr. Byrd states that he has been employed at his present job for more than one year. Testimony.

16. Mr. Byrd filed his financial documentation under oath. Based upon the Financial Hardship Calculation, Mr. Byrd shall not be subject to administrative wage garnishment at this time.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $29,250.31 exclusive of potential Treasury fees for the mortgage loan extended to him.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $8,775.09.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent shall not be subject to administrative garnishment of his wages at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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ADMINISTRATIVE WAGE GARNISHMENT ACT

In re: MARIA ROSA HASBUM.
Docket No. 12-0117.
Decision and Order.
Filed April 16, 2012.

AWG.

Maria Rosa Hasbum pro se.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

1. The hearing by telephone was held on February 1, 2012. Maria Rosa Hasbum, the Petitioner ("Petitioner Hasbum"), participated, representing herself (appears *pro se*). Petitioner Hasbum was assisted by Alicia Montes, who interpreted and translated, from English to Spanish and from Spanish to English, during the hearing.

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. Petitioner Hasbum's documents filed on January 26, 2012, are admitted into evidence, together with the testimony of Petitioner Hasbum. The documents filed on January 26 include a "Consumer Debtor Financial Statement" signed January 20, 2012; Petitioner Hasbum's letter dated January 20, 2012, which Alicia Montes helped her write; and accompanying financial documentation, including a Notice from the Social Security Administration documenting her husband's SSI (Supplemental Security Income). Also admitted into evidence is Petitioner Hasbum's Hearing Request filed on December 20, 2011, and accompanying documents, including Petitioner Hasbum's letter dated December 5, 2011.

4. USDA Rural Development's Exhibits RX 1 through RX 5, plus Narrative, Witness & Exhibit List, were filed on January 4, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner.

5. Petitioner Hasbum owes to USDA Rural Development **$18,434.69** (as of December 29, 2011, *see* esp. RX 5, pp. 4, 6), in repayment of a United States Department of Agriculture / Rural Development / Rural Housing Service loan made in 2003, for a home in Texas. The balance is now unsecured ("the debt").

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **$18,434.69**, would increase the balance by $5,161.71 to $23,596.40. *See* esp. RX 5, p. 6.

7. The amount Petitioner Hasbum borrowed in 2003 was $63,776.00. RX 1. The loan was paid through only June 18, 2004. A Notice of Default was sent to Petitioner Hasbum on October 22, 2004 (RX 2, p. 2); then a Notice of Acceleration and Intent to Foreclose was sent to Petitioner Hasbum on December 9, 2004, by USDA Rural Development. RX 2, pp. 6-8. When the house was sold on March 7, 2006, nearly 2 years after the last payment was made, the USDA Rural Development debt had grown to $73,807.69:

$ 62,593.53 Principal Balance
$ 6,451.42 Interest Balance prior to sale (nearly 2 years of interest)
$ 4,762.74 Fee Balance prior to sale (includes unpaid real estate taxes, unpaid insurance premiums, interest on fee balance, NSF fee)
=========
$ 73,807.69 Total Amount Due when sale funds were applied on the loan

RX 5, p. 3 and USDA Rural Development Narrative. *See* RX 3, pp. 7, 9, 10, re: taxes and insurance (E91 for taxes; E 20 for insurance); see RX 3, p. 11.

The sale funds of $51,200.00 were applied to the Amount Due. Interest stopped accruing when the sale funds were applied on the loan, on March 31, 2006. RX 3, p. 9. Collections from Treasury (through ***offset***; *see* RX 5, p. 4 for Petitioner Hasbum's income tax refunds and stimulus money that were intercepted and applied to the debt) reduced the debt

from $22,607.69 to **$18,434.69** unpaid as of December 29, 2011 (excluding the potential remaining collection fees). *See* RX 5 and USDA Rural Development Narrative.

8. Petitioner Hasbum lives with her husband, the co-borrower. Petitioner Hasbum is not employed because her medical conditions forced her to give up even the part-time work she had at the Senior Citizens Center. Petitioner Hasbum's husband is working part-time, and he makes little; even with his earnings, he remains eligible for SSI. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **0%** of Petitioner Hasbum's disposable pay. 31 C.F.R. § 285.11.

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

Discussion

10. I recommend that Petitioner Hasbum be granted **a financial hardship discharge** of the debt. Petitioner Hasbum, this will require **you** to telephone Treasury's collection agency after you receive this Decision. To be considered (the decision whether to grant you a financial hardship discharge will be made by Treasury's collection agency), you will be required to provide, timely, all financial documentation requested. The toll-free number for you to call is **1-888-826-3127**. Petitioner Hasbum, if you are not granted a financial hardship discharge (and it is difficult to qualify), 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 Hasbum, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

12. Petitioner Hasbum owes the debt described in paragraphs 5 through 7.

13. **Garnishment is not authorized**. Garnishment in any amount would cause Petitioner Hasbum financial hardship. 31 C.F.R. § 285.11.

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

15. Repayment of the debt may occur through ***offset*** of Petitioner Hasbum's **income tax refunds** or other **Federal monies** payable to the order of Ms. Hasbum.

ORDER

16. Until the debt is repaid, Petitioner Hasbum 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).

17. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment in any amount. 31 C.F.R. § 285.11.

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

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In re: STACEY L. BRITTON.
Docket No. 12-0158.
Decision and Order.
Filed April 17, 2012.

AWG.

Stacey L. Britton, pro se.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

ADMINISTRATIVE WAGE GARNISHMENT ACT

DECISION AND ORDER

1. Following a prehearing conference (by telephone) on February 15, 2012, the Hearing (by telephone) was held on March 19 (Monday) 2012. Petitioner Stacey L. Britton, formerly Stacey L. Bolin ("Petitioner Britton"), participated, representing herself (appearing *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. Petitioner Britton's documents filed on March 5, 2012 (pay stubs for two recent pay periods), are admitted into evidence, together with the testimony of Petitioner Britton and the testimony of Anita McKenna. Petitioner Britton's documents filed on March 30, 2012 (compiled and presented by Anita McKenna) are admitted into evidence. Also admitted into evidence is Petitioner Britton's Hearing Request filed on January 5, 2012 and accompanying documents, including Petitioner Britton's FAX to Melody Bevelle dated and FAXed on December 28, 2011; Petitioner Britton's "Consumer Debtor Financial Statement" which is not dated but was also FAXed on December 28, 2011, and Petitioner Britton's email to "awgquestions@fms.treas.gov" dated December 27, 2011.

4. USDA Rural Development's Exhibits RX 1 through RX 6, plus Narrative, Witness & Exhibit List, were filed on January 27, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner.

5. Petitioner Britton owes to USDA Rural Development a balance of **$15,508.43** (as of January 25, 2012) in repayment of a United States Department of Agriculture / Farmers Home Administration loan made in 1993, for a home in South Carolina. The balance is now unsecured ("the debt"). *See* USDA Rural Development Exhibits RX 1 through RX 6, esp. RX 6, plus Narrative, Witness & Exhibit List.

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **$15,508.43** would increase the current balance by $4,652.53, to $20,160.96. *See*

USDA Rural Development Exhibits, esp. RX 6, p. 5, plus the testimony of Michelle Tanner.

7. The amount Petitioner Britton (then Bolin) borrowed in 1993 was $50,000.00. RX 1. More than six years after the loan was made, the loan was reamortized, in 1999. RX 1, pp. 4-5. The loan had become delinquent, and reamortization made the loan current, by adding the delinquent amount to the principal balance. The reamortization did not change the total amount owed, which all became principal. The principal amount due on the account became $50,030.77. Petitioner Britton was not able to keep the loan current; the loan was accelerated for foreclosure on May 25, 2004. RX 3, pp. 4-6. By the time the home was sold for $35,000.00 (after the home was appraised at $35,000.00) on June 30, 2004, the debt had grown to $55,835.91.

$ 47,200.08 Unpaid Principal Balance prior to sale
$ 7,847.19 Unpaid Interest Balance prior to sale
$ 788.64 Recoverable costs and fees (fees can include unpaid real estate taxes, unpaid insurance premiums, negative escrow), interest on fees

$ 55,835.91
35,000.00 Proceeds from the sale

$ 20,835.91 Amount Due
=========

RX 6, p. 1, and USDA Rural Development Narrative.

Interest stopped accruing when the proceeds of sale ($35,000.00) were applied to the debt, in 2004. Collections from Treasury since then (from Petitioner Britton's co-borrower, John A. Bolin, Sr.), through ***offsets***, primarily of **income tax refunds** ($5,327.48 applied to the debt), leave **$15,508.43** unpaid as of January 25, 2012 (excluding the potential remaining collection fees). *See* RX 6, p. 2, plus Michelle Tanner's testimony.

8. Petitioner Britton maintains in her Hearing Request and throughout this proceeding that she should have been advised by USDA of the amount of the deficiency that she would be held responsible to pay before agreeing to the short sale or at least at the closing. Petitioner Britton and her witness Anita McKenna testified that what they were advised instead was that USDA would issue the sellers a 1099 for the remaining balance. *See* Hearing Request, Petitioner Britton's documents filed on March 30, 2012, and the testimony of Petitioner Britton and Anita McKenna. *See also* letter dated March 12, 2005, from Petitioner Britton (then Bolin) and her co-borrower, John A. Bolin, Sr.

9. USDA Rural Development's practice then and now for borrowers whose short sale left them with a deficiency was to permit the borrowers to apply for settlement of indebtedness. "Any remaining debt due to the Agency after a short sale must be settled using our debt settlement process." *See* RX 5, p. 13. On July 17, 2004, USDA Rural Development mailed a debt settlement application to the borrowers.

> "On July 17, 2004, the debt settlement package was sent to the mailing address indicated on Ms. Bolin's (Petitioner Britton's name when the loan was made) account which is 1014 Bransome Blvd Aiken, SC 29803. The debt settlement package was sent regular mail and was not returned back to Centralized Servicing Agency (CSC).
>
> Unfortunately, Ms. Bolin did not provide the Agency with an offer to settle the remaining balance owed to the Agency. The Agency was unable to recover any funds owed to the Agency by Ms. Bolin. Consequently, on October 4, 2004, her debt was turned over to the United States Department of Treasury for Cross Servicing."

RX 5, pp. 13, 14.

The address for mailing the debt settlement application had been provided by the closing attorney, Morris Rudnick, of Rudnick & Rudnick, Attorneys at Law, Aiken, South Carolina. RX 5, p. 2. Mr. Rudnick wrote: "You can send the debt settlement package to 1014 Bransome

Blvd., Aiken, SC 29803 or 1993 Dibble Road, Aiken, SC 29803 and the McKennas will see that it gets to them." [The first address is the home that Petitioner Britton sold in the short sale; the McKennas were the buyers; Mrs. McKenna is Petitioner Britton's mother.]

10. USDA Rural Development submitted the debt to the U.S. Treasury for collection, as required by statute, and there is a time limit for doing so. Petitioner Britton was sent the 60-day notification letter of the loan being referred to Treasury for collection if the remaining balance was not paid. When Petitioner Britton later, in March 2005, applied for debt settlement (RX 5, pp. 4-9), it was too late for USDA Rural Development to consider the Application, because the loan was already in the hands of Treasury (and had been, since October 2004). USDA Rural Development mistakenly made a counter-offer (RX 5, p. 10) on March 30, 2005, which it had no authority to make, since Treasury was collecting the debt.

11. Petitioner Britton works full-time in the medical field as a phlebotomist, making $11.50 per hour. Her disposable pay (within the meaning of 31 C.F.R. § 285.11) is roughly $1,600.00 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.] 31 C.F.R. § 285.11. Petitioner Britton's Consumer Debtor Financial Statement shows living expenses for herself and her two teenagers that cost more than Petitioner Britton's disposable pay. Petitioner Britton is trying to obtain child support.

12. Garnishment at 15% of Petitioner Britton's disposable pay could yield $240.00 per month in repayment of the debt, but that would cause Petitioner Britton and her two children financial hardship. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **0%** of Petitioner Britton's disposable pay through May 2014; then **up to 10%** of Petitioner Britton's disposable pay thereafter. 31 C.F.R. § 285.11.

13. Petitioner Britton is responsible and able to negotiate the repayment of the debt with Treasury's collection agency.

ADMINISTRATIVE WAGE GARNISHMENT ACT

Discussion

14. Garnishment of Petitioner Britton's disposable pay is authorized, in limited amount. *See* paragraph 12. Petitioner Britton, you may want to telephone Treasury's collection agency to **negotiate** the repayment of the debt. Petitioner Britton, this will require **you** to telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Britton, 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 Britton, you may want to request apportionment of debt between you and the co-borrower. Petitioner Britton, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

16. Petitioner Britton owes the debt described in paragraphs 5, 6 and 7.

17. To prevent financial hardship, garnishment **up to 0%** of Petitioner Britton's disposable pay is authorized, through May 2014; and **up to 10%** thereafter. 31 C.F.R. § 285.11.

18. **No refund** to Petitioner Britton of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.

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

ORDER

20. Until the debt is repaid, Petitioner Britton 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).

21. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment **up to 0%** of Petitioner Britton's disposable pay through May 2014; and **up to 10%** thereafter. 31 C.F.R. § 285.11.

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

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

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In re: STEVEN D. KIERSTEAD.
Docket No. 12-0160.
Decision and Order.
Filed April 18, 2012.

AWG.

Steven D. Kierstead Pro se.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

1. The Hearing (by telephone) was held on February 15, 2012. Petitioner Steven D. Kierstead ("Petitioner Kierstead"), 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 is represented by Michelle Tanner.

Summary of the Facts Presented

3. Petitioner Kierstead's "Consumer Debtor Financial Statement" filed on February 6, 2012 is admitted into evidence, together with the testimony of Petitioner Kierstead. Also admitted into evidence is Petitioner Kierstead's Hearing Request filed on January 5, 2012.

4. USDA Rural Development's Exhibits RX 1 through RX 6, plus Narrative, Witness & Exhibit List, were filed on January 30, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner.

5. Petitioner Kierstead owes to USDA Rural Development a balance of **$48,215.36** (as of January 25, 2012) in repayment of a United States Department of Agriculture / Farmers Home Administration loan made in 1987, for a home in Maine. The balance is now unsecured ("the debt"). *See* USDA Rural Development Exhibits RX 1 through RX 6, esp. RX 5, plus Narrative, Witness & Exhibit List.

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **$48,215.36** would increase the current balance by $13,500.30, to $61,715.66. *See* USDA Rural Development Exhibits, esp. RX 5, p. 3, plus the testimony of Michelle Tanner.

7. The amount Petitioner Kierstead borrowed in 1987 was $49,500.00. RX 1. The loan was reamortized 3 times, in 1990, in 1996, and in 1998. RX 1, p. 3. Each time, the loan had become delinquent, and reamortization made the loan current, by adding the delinquent amount to the principal balance. The reamortization did not change the total amount owed, which all became principal. In 1990, the principal amount due on the account became $49,519.87. RX 1, p. 3. In 1996, the principal amount due on the account became $54,411.25. RX 1, p. 3. In 1998, the principal amount due on the account became $62,333.75. RX 1, p. 3. Petitioner Kierstead made no payments after April 2, 1998. The loan was accelerated for foreclosure on March 4, 1999. RX 2, pp. 1-3. Interest accrued after April 2, 1998 was added to the principal, making the principal balance $76,647.80 as of August 28, 2000 (more than 2 years of interest). By the time the home was sold for $33,000.00 in a foreclosure

sale on December 13, 2000 (the Appraised Value was $36,000.00; *see* RX 3, p. 1), the debt had grown to $79,142.52.

$ 76,647.80	Unpaid Principal Balance prior to sale
$ 2,494.72	Unpaid Interest Balance
$ 79,142.52	
- 33,000.00	Proceeds from the sale
$ 46,142.52	Amount Due

RX 6, p. 1, and USDA Rural Development Narrative.

Foreclosure fees billed by the Department of Justice in the amount of $2,072.84 ($1,400.00 plus $672.84; *see* RX 3, p. 10) were thereafter added, making the balance owed $48,215.36. The proceeds of sale were received on January 26, 2001. Interest stopped accruing. The debt was referred to Treasury for collection on December 8, 2003. During the following 8 years plus, there were no collections by Treasury; as of January 25, 2012, **$48,215.36** remained unpaid (excluding the potential remaining collection fees). *See* RX 6, plus Michelle Tanner's testimony. Petitioner Kierstead reported during the Hearing that garnishment did begin but appeared to have stopped.

8. Petitioner Kierstead works full-time as a dispatcher, making $14.10 per hour. His disposable pay (within the meaning of 31 C.F.R. § 285.11) is roughly $1,800.00 to $1,900.00 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.] 31 C.F.R. § 285.11. Petitioner Kierstead's Consumer Debtor Financial Statement shows reasonable and necessary monthly living expenses for himself and his wife of nearly 32 years (his co-borrower) of $2,686.00. At the time of the hearing Petitioner Kierstead's wife was unemployed and receiving unemployment compensation. Petitioner Kierstead and his wife have two grown sons and two grandchildren. Petitioner Kierstead is paying several years' back taxes, both state and federal. Petitioner Kierstead

owes considerable credit card debt and a significant balance on a motor vehicle that was repossessed.

9. Garnishment at 15% of Petitioner Kierstead's disposable pay could yield $270.00 to $285.00 per month (more when there is overtime) in repayment of the debt, but that would cause Petitioner Kierstead and his wife financial hardship. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 5) must be limited to **5%** of Petitioner Kierstead's disposable pay through May 2014; then **up to 10%** of Petitioner Kierstead's disposable pay thereafter. 31 C.F.R. § 285.11.

10. Petitioner Kierstead is responsible and able to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

11. Garnishment of Petitioner Kierstead's disposable pay is authorized, in limited amount. *See* paragraph 9. Petitioner Kierstead, you may want to telephone Treasury's collection agency to **negotiate** the repayment of the debt. Petitioner Kierstead, this will require **you** to telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Kierstead, 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 Kierstead, you may want to request apportionment of debt between you and the co-borrower. Petitioner Kierstead, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

13. Petitioner Kierstead owes the debt described in paragraphs 5, 6 and 7.

14. To prevent financial hardship, garnishment **up to 5%** of Petitioner Kierstead's disposable pay is authorized, through May 2014; and **up to 10%** thereafter. 31 C.F.R. § 285.11.

15.**No refund** to Petitioner Kierstead of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.

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

ORDER

17.Until the debt is repaid, Petitioner Kierstead 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).

18.USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment **up to 5%** of Petitioner Kierstead's disposable pay through May 2014; and **up to 10%** thereafter. 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 Kierstead's pay, to be returned to Petitioner Kierstead.

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

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In re: MARY J. CASPER.
Docket No. 12-0253.
Decision and Order.
Filed April 18, 2012.

AWG.

ADMINISTRATIVE WAGE GARNISHMENT ACT

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On March 15, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-11 on March 9, 2012. On April 11, 2012, at the time set for the hearing, both parties were available. Ms. Michelle Tanner represented RD. Ms. Casper was self represented. The parties were sworn.

Petitioner has been involuntary unemployed due to illness.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On March 24, 2008, Petitioner obtained a loan for the purchase of a primary home mortgage loan in the amount of $86,700.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase her home on a property located in Bella Vista, Arkansas. RX-1.

2. At the same time, the borrower signed RD form 1980-21 (Loan Guarantee). RX-1 @ p. 2 of 4.

3. The Borrower became delinquent. The loan was accelerated for foreclosure on January 8, 2010. Narrative.

4. At the foreclosure sale of April 12, 2010, JP Morgan Chase purchased the home for $60,840.73. JP Morgan Chase then listed the home for re-sale on June 19, 2010 for $68,900. (RX-6 @ 6 of 10). It was subsequently re-sold for $65,000 on July 29, 2010 to a third party. Narrative, RX-5 @ page 4 of 8.

5. The borrowers owed $85,117.74 for principal, plus $5,720.66 for interest, plus $929.23 for protective advancements, plus $8.57 interest on the protective advancement for a total of $ 91,776.20 to pay off the RD loan. Narrative, RX-9.

6. USDA RD paid JP Morgan Chase in the amount of $36,243.86 for their loss under the loan guarantee program. Narrative, RX-9.

7. Treasury has collected an additional $1388.50 towards the debt. RX-11.

8. The remaining amount due of $34,855.36 was transferred to Treasury for collection on March 7, 2012. RX-11 @ p. 2 of 2.

9. The potential Treasury collection fees are $9,759.86. RX-11 @ p. 2 of 2.

10. Ms. Casper is involuntarily unemployed.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $34,855.36 exclusive of potential Treasury fees for the mortgage loan extended to her.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $9,759.50.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is not entitled to administratively garnish the wages of the Petitioner at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After one year, RD may re-assess the Petitioner's financial position.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: KERRY JENNINGS.
Docket No. 12-0256.
Decision and Order.
Filed April 19, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On March 16, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-5 on March 16, 2012. On April 11,

2012, at the time set for the hearing, both parties were available. Ms. Michelle Tanner represented RD. Ms. Jennings was self represented. Ms. Jennings stated that she received RD's exhibits, but she did not have them with her at the time of the hearing but she nevertheless elected to continue with the hearing. The parties were sworn.

Petitioner has been employed for more than one year. There are two wage earners and four minor children in the family unit. Petitioner receives child support for her 15 year old daughter. There is a former garnishment from a business, an outstanding bill from a physician, and a tuition loan taking funds from the family's disposable income.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On July 7, 2000, Petitioner obtained a loan for the purchase of a primary home mortgage loan in the amount of $36,400.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase her home on a property located in Farmington, Missouri. RX-1.

2. The Borrower reamortized the loan on/about January 7, 2007. RX-1 @ p. 4 of 11.

3. The Borrower became delinquent. The loan was accelerated for foreclosure on August 28, 2009. Narrative, RX-2.

4. The home was sold in a short sale on June 15, 2010 for $40,000.00. RX-3 @ p. 4 of 16.

5. Prior to the short sale the Borrower owed $56,513.38 for principal, plus interest, plus fees and recoverable costs to pay off the RD loan. Narrative, RX-5 @ 1 of 4.

6. Treasury has collected an additional $8,758.00 towards the debt. RX-5 @ 1 of 4.

7. The remaining amount due of $7,755.38 was transferred to Treasury for collection on March 12, 2012. RX-5 @ p.3 of 4.

8. The potential Treasury collection fees are $2,171.51. RX-5 @ p. 3 of 4.

9. Ms. Jennings has been employed for more than one year. Her husband is also employed and she receives child support for one child.

10. There are pre-existing financial obligations for the family unit for a wage garnishment from a day care center, a school tuition loan, and a pediatrician.

11. There are ongoing expenses for full time child day care. There are four licensed drivers in the family unit.

12. I performed a Financial Hardship calculation based upon the borrower's financial statements which were submitted under oath.[1]

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $7,755.38 exclusive of potential Treasury fees for the mortgage loan extended to her.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $2,171.51.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is NOT entitled to administratively garnish the wages of the Petitioner at this time.

ORDER

[1] The Financial Hardship calculation is not posted on the OALJ website.

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After one year, RD may re-assess the Petitioner's financial position.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: CASSIE WAGNER, f/k/a CASSIE SWANSON.
Docket No. 12-0238.
Decision and Order.
Filed April 20, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On March 15, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-12 on March 9, 2012. On April 18, 2012, at the time set for the hearing, both parties were available. Ms. Michelle Tanner represented RD. Ms. Wagner was self represented. The parties were sworn.

Petitioner has been employed for less than one year.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On August 8, 2007, Petitioner (Borrower) obtained a loan for the purchase of a primary home mortgage loan in the amount of $64,668.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase her home on a property located in Cambridge Illinois. RX-1.

2. Prior to signing the loan, Borrower signed RD form 1980-21 (Loan Guarantee). RX-2 @ p. 1 of 5.

3. The Borrower became delinquent. The loan was accelerated for foreclosure. Narrative.

4. At the foreclosure sale of May 9, 2009, JP Morgan Chase purchased the home for $50,150.00. JP Morgan Chase then had the property appraised for re-sale "AS IS" on November 18, 2009 for $54,000.00. RX-5 @ p. 1 of 7.

5. On March 1, 2010, the property was determined to have a liquidation value of $31,500. (RX-6). It was not re-sold in the allowable six month time period. Narrative, RX-7 @ p. 1 of 9.

6. The Borrower owed $79,610.47 for principal, interest, and protective advancements to pay off the RD loan. Narrative, RX-11 @ p. 1 of 5.

7. USDA RD paid JP Morgan Chase for their loss in the amount of $44,498.92 less an administration adjustment of $2,196.05 due to their negligence under the loan guarantee program. Narrative, RX-7 @ p. 9 of 9.

8. Treasury has collected an additional $1374.00 towards the debt. RX-11 @ p. 2 of 5.

9. The remaining amount due of $40,718.92 was transferred to Treasury for collection on March 7, 2012. RX-11 @ p. 3 of 5.

10. The potential Treasury collection fees are $11,401.30. RX-11 @ p. 3 of 5.

11. Ms. Wagner became employed in April 2012.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $40,718.92 exclusive of potential Treasury fees for the mortgage loan extended to her.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $11,401.30.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is NOT entitled to administratively garnish the wages of the Petitioner at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After one year, RD may re-assess the Petitioner's financial position.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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ADMINISTRATIVE WAGE GARNISHMENT ACT

In re: TONYA LUMPKIN.
Docket No. 12-0300.
Decision and Order.
Filed April 20, 2012.

AWG.

Petitioner, pro se and assisted by Lee Livingston.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On March 26, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-10 on March 26, 2012. On April 17, 2012, at the time set for the hearing, both parties were available. Ms. Michelle Tanner represented RD. Ms. Lumpkin was assisted by co-borrower Lee Livingston. The parties were sworn.

Petitioner is unemployed.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On April 25, 2008, the Borrowers obtained a loan for the purchase of a primary home mortgage loan in the amount of $79,000.00 from Farmers Home Administration (FmHA), United States Department of Agriculture

(USDA), now Rural Development (RD) to purchase her home on a property located in Bastrop, Louisiana. RX-2.

2. At the same time, the borrower signed RD form 1980-21 (Loan Guarantee). RX-1 @ p. 2 of 2.

3. The Borrowers became delinquent in less than two months. The loan was accelerated for foreclosure on April 16, 2009. Narrative, RX-6 @ p. 6 of 21.

4. Co-borrower Lee Livingston filed two filed Chapter 13 bankruptcies since the borrowers defaulted and the loan was delinquent for 319 days. RX-6 @ p. 6 of 21 and RX-9 @ p. 2 of 5.

5. At the foreclosure sale of February 17, 2010, JP Morgan Chase purchased the home for $68,850.00. RX-3 @ p. 2 of 3.

6. JP Morgan Chase then listed the home for re-sale "AS IS" on April 19, 2010 for $38,000.00. RX-6 @ p. 7 of 21.

7. The property was purchased for $32,400.00 on July 16, 2010. RX-6 @ p. 7 of 21.

8. The property was not re-sold in the allowable six month time period. Narrative, RX-6 @ p. 7 of 21.

9. The Borrower owed $103,139.79 for principal interest, and protective advancements to pay off the RD loan. Narrative, RX-7.

10. USDA RD paid JP Morgan Chase for their loss in the amount of $60,024.25 under the loan guarantee program. Narrative, RX-7.

11. Treasury intercepted $6639.00 and credited it toward this account. RX-10 @ p. 2 of 5.

12. The remaining amount due of $53,402.25 was transferred to Treasury for collection on March 27, 2012. RX-10 @ p. 4 of 5.

13. The potential Treasury collection fees are $14,952.88. RX-10 @ p. 4 of 5.

14. Petitioner is unemployed.

Conclusions of Law

1. Petitioner is jointly and severally indebted to USDA Rural Development in the amount of $53,402.25 exclusive of potential Treasury fees for the mortgage loan extended to her.

2. In addition, Petitioner is jointly and severally indebted for potential fees to the US Treasury in the amount of $14,952.88.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is NOT entitled to administratively garnish the wages of the Petitioner at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After one year, RD may re-assess the Petitioner's financial position.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: TAYLOR BARKLEY.
Docket No. 12-0226.
Decision and Order.
Filed April 23, 2012.

SOA.

Petitioner, pro se.
Michael Chirin for FS.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the timely request by Taylor Barkley ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the U.S. Department of Agriculture Forest Service ("USDA"; "Respondent"), and if established, the propriety of imposing administrative wage garnishment. I held a pre-hearing conference with the parties and directed them to file and exchange information and documentation and set the matter for a hearing to commence by telephone on April 23, 2012.

Respondent electronically filed supporting documentation numbered 1 through 60 with the Hearing Clerk, identified as exhibit RX-1, and on the day of the hearing, Respondent filed additional documents identified as RX-2. Petitioner filed a statement of his expenses, together with a copy of an earnings statement, identified as PX-1 and PX-2, respectively. The parties exchanged their exhibits with each other.

The hearing was held as scheduled, and the documents of both parties were admitted to the record. Testimony was given by Respondent's representative, Michael Chirin and by the Petitioner, who represented himself.

On the basis of the entire record before me, the following Findings of Fact and Conclusions of Law and Order will be entered:

ADMINISTRATIVE WAGE GARNISHMENT ACT

Findings of Fact

1. Petitioner was employed by USDA in the fall of 2005, and traveled extensively as part of his duties.

2. Expenses related to Petitioner's work-related travel were reimbursed upon Petitioner's submission of travel vouchers to USDA. RX-1 at 14 through 19.

3. Duplicate payments were made to Petitioner for vouchers for travel for the period covering September 29, 2005 through October 17, 2005. RX 1 at 8.

4. The duplicate payments occurred due to administrative error, and not due to any action or inaction of Petitioner Taylor Barkley.

5. Petitioner was aware of being paid at least one of the duplicate amounts and requested information regarding the over-payments and further requested to be billed for the amounts. RX-1 at 10 through 12.

6. Duplicate payments for one voucher, and a partial duplicate for another, were deposited in Petitioner's bank account. RX-2.

7. In June, 2008, USDA sent a bill and demand for payment from Petitioner to an address in Jacksonville, Florida, which correspondence was returned to USDA as undeliverable. RX-1 at 1 through 8.

8. Petitioner credibly testified that he lived in Boise, Idaho at all times relevant to the events involved in this proceeding, and never used an address in Jacksonville, Florida.

9. Petitioner's address in USDA's records was a PO Box in Boise, Idaho. RX-1.

10. At the time the demand for payment was mailed in June, 2008, Petitioner's debt was $4,474.44, consisting of $3,581.66 principal, $334.29 interest, $75.00 administrative costs and $483.49 penalty. RX 1 at 6, 7.

11. Petitioner's account was referred to the U.S. Department of Treasury ("Treasury") for collection as required by law. RX-1.

12. When the debt was referred to Treasury, additional penalty and interest had accrued for a total of $7,234.45. See, Petitioner's account filed with request for hearing.

13. Petitioner was unaware of the status of the debt until he received a letter from Treasury's agents in June, 2011, and he challenged the debt as unsupported by documentation.

14. As of the date of the request for a hearing, the debt at Treasury was $7,512.54.

15. At the hearing, USDA's representative exercised his authority to waive accumulated interest and penalty, in consideration of USDA's error in creating the debt and the failure to give Petitioner timely notice and demand for payment at his address of record.

16. Petitioner's income tax refund for the current year, 2011, was intercepted by Treasury and applied to offset his account.

17. Petitioner's debt consists of $3,581.66, minus a credit for his 2011 tax refund, plus the fees, interest and penalty accrued on the debt at Treasury, since June 1, 2011.

18. Petitioner has disposable income from his employment.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. USDA has waived interest and penalty accruing on Petitioner's account.

3. Petitioner's 2011 income tax refund has been applied against the account at Treasury.

4. Petitioner is indebted to USDA-RD in the amount of $3,581.66, (-) credit for 2011 income tax refund, (+) interest, penalties and fees accruing on the principal since June 1, 2011.

5. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

6. Pursuant to the regulations pertaining to debt collection by wage garnishment, Petitioner's disposable income supports wage garnishment at the legal maximum percentage. See, 31 C.F.R. §§ 900-904; 31 U.S.C. §3717.

7. There is no evidence of hardship as defined by law or regulation.

8. The Respondent is entitled to administratively garnish the wages of the Petitioner at the regulatory and statutory maximum of 15%.

9. Wage garnishment shall be suspended for ninety (90) days from the date of this Order, to allow Petitioner time to negotiate payment of the debt with Treasury's agents.

10. Wage garnishment may be imposed as of July 23, 2012.

11. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment after 90 days from the date of this Order. Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-866-910-3101**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk's Office.

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In re: JUDITH UPTON-HALL.
Docket No. 12-0259.
Decision and Order.
Filed April 23, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the February 24, 2012 request by Judith Upton-Hall ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the U.S. Department of Agriculture, Rural Development ("USDA-RD"; "Respondent"), and if established, the propriety of imposing administrative wage garnishment. By Order issued on March 15, 2012, the parties were directed to file and exchange information and documentation and the matter was set for a hearing to commence by telephone on April 17, 2012.

On March 16, 2012, Respondent filed a Narrative, together with supporting documentation, identified as exhibits RX-1 through RX-5. On April 13, Respondent filed a supplemental exhibit identified as EX-6. On April 17, Attorney David C. Weigel entered his appearance on behalf of Petitioner. Three documents were filed for Petitioner: a Statement of Account (PX-1); a Consumer Debtor Financial Statement (PX-2); and Petitioner's earning statement for the period ending March 25, 2012 (PX-3).

The hearing was held as scheduled, and the documents of both parties were admitted to the record. Testimony was given by Respondent's representative, Michelle Tanner, of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri. Petitioner's counsel declined to offer any witnesses, and instead agreed to provide a copy of Petitioner's wage statement, which was received and is hereby admitted to the record. Petitioner argued that she had not been credited for all payments made against the account maintained by the U.S. Department of Treasury ("Treasury"). Petitioner also objected to the narrative submitted by USDA-RD as erroneous, thereby depriving her of due process. Although I agree that the narrative is misleading, I ruled that due process has been met because copies of documents supporting Petitioner's indebtedness had been sent to her, as well as copies of relevant portions of her loan account. In addition, the evidence reveals that Petitioner was directly provided information about the balance due on these accounts in 2004, upon an inquiry by an attorney. RX-3; RX-4. I shall nevertheless exclude from my consideration the narrative filed by USDA-RD. The instant Decision and Order relies entirely upon Respondent's exhibits and testimony and Petitioner's exhibits and arguments.

I directed Respondent to provide to Petitioner's counsel supporting documentation showing the amount of Petitioner's tax offsets that was applied to penalties as opposed to the outstanding balance of her account at Treasury, to the extent that such documentation was lacking at RX-6. Based upon my cursory review of Petitioner's documents at the time of the hearing (the documents were not filed until ½ hour or so before the hearing was scheduled to commence), I believed that Petitioner's disposable income would have limited the percentage of wage garnishment allowed. However, the evidence supports otherwise for the reasons set forth below.

On the basis of the entire record before me, the following Findings of Fact and Conclusions of Law and Order will be entered:

Findings of Fact

1. On June 2, 1995, Petitioner assumed a loan from USDA-RD in the amount of $50,107.21 and also obtained a direct loan in the amount of $36,000.00 to finance the purchase of property in St. Leonard, Maryland, as evidenced by a Promissory Note and Real Estate Mortgage. RX-1.

2. Petitioner's loans were maintained in two accounts, which were accelerated on November 30, 2000 due to default. RX-2.

3. At a foreclosure sale held on April 11, 2002, the property was sold to a third party for $84,895.72. RX-3; RX-6.

4. At the time of the sale, Petitioner owed $74,048.09 on the assumed loan and $41,614.72 on the direct loan, which amounts include accumulated fees and interest. RX-2; RX-3; RX-6.

5. After the proceeds from the sale were applied and fees were added to the accounts, Petitioner owed $24,435.48 on the assumed loan and $7,281.61 on the direct loan. RX-3; RX-6.

6. Petitioner's accounts were referred to Treasury for collection as required by law. RX-5.

7. Petitioner's income tax refunds for the years 2003, 2004, 2005 and 2008 were intercepted by Treasury and applied to offset the accounts. RX-6.

8. The smaller of Petitioner's accounts has been satisfied, leaving one account with a balance due of $18,987.48.

9. Petitioner declined to testify, but provided a copy of a recent wage statement. PX-3.

10. Relying upon Treasury's Wage Garnishment Worksheet (SF-329C), and the reliable evidence of Petitioner's earnings and her certified Consumer Debtor Financial Statement, I have concluded that Petitioner's disposable bi-monthly income is $1,339.23[1]. PX-2; PX-3.

11. I reject the argument by Petitioner's counsel that wage garnishment is unnecessary because the debt has been and will be paid through tax refund offset, in part because the Debt Collection Act allows for the imposition of wage garnishment, and significantly because Petitioner has claimed eight (8) exemptions[2] against federal taxes, thereby maximizing her net pay and minimizing tax refunds. PX-3.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. One of the accounts at Treasury for collection has been satisfied through offset of Petitioner's tax refunds.

3. Petitioner's accounts have been fully credited to reflect offset of the debt by tax refunds.

4. Petitioner is indebted to USDA-RD in the amount of $18,987.48, exclusive of potential Treasury fees for the remaining balance on one of the mortgage loans extended to her.

5. Petitioner was not prejudiced by erroneous information in USDA-RD's narrative, since Petitioner was provided accurate information about the balance due on these debts in 2004 at the request of her attorney, and because USDA-RD provided documentary evidence establishing the existence and validity of the debt and all credits applied to Petitioner's account.

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[1] Amounts for a health savings account, credit union, "def comp", and world gym are not considered exemptions from the calculation of disposable pay. See, SF 329 C; 31 D.F.R. § 285.11. However, my Decision and Order would not be changed even if I characterized these deductions as exemptions.

[2] Since Petitioner is single and claims no dependents (PX-2), this clearly is not an accurate reflection of her tax exemptions.

6. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

7. Pursuant to the regulations pertaining to debt collection by wage garnishment, Petitioner's disposable income supports wage garnishment at the legal maximum percentage. See, 31 C.F.R. §§ 900-904; 31 U.S.C. §3717.

8. There is no evidence of hardship as defined by law or regulation.

9. The Respondent is entitled to administratively garnish the wages of the Petitioner at the regulatory and statutory maximum of 15%.

10. Wage garnishment shall be suspended for three months, or ninety (90) days, from the date of this Order, to allow Petitioner time to negotiate payment of the debt with Treasury's agents.

11. Wage garnishment may be imposed as of July 23, 2012.

12. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment 90 days from the date of this Decision and Order.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in her address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk's Office.

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In re: JOSHUA DAVIS.
Docket No. 12-0305.
Decision and Order.
Filed April 23, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On March 26, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-8 on March 29, 2012. On April 18, 2012, at the time set for the hearing, both parties were available. Ms.

Michelle Tanner represented RD. Ms. Davis was self represented. The parties were sworn.

Petitioner has been employed for less than one year.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On September 8, 2008, Petitioner obtained a loan for the purchase of a primary home mortgage loan in the amount of $76,500.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase his home on a property located in Rock Cave, WV. RX-2.

2. Prior to signing the loan, the borrower signed RD form 1980-21 (Loan Guarantee). RX- @ p. 2 of 2.

3. The Borrower became delinquent. The loan was accelerated for foreclosure on October 20, 2010. Narrative, RX-5 @ p. 5 of 14.

4. At the foreclosure sale of November 3, 2010, the property was purchased by a third party for $21,251.00. Narrative, RX-3 @ page 5 of 7.

5. The borrower owed $75,962.56 for principal, plus $4,573.15 for interest, plus $934.50 for protective advancements, plus $8.15 interest on the protective advancement for a total of $81,478.36 to pay off the RD loan. Narrative, RX-6.

6. In addition, under the loan guarantee program, borrower owes an additional $1,448.74 for fees and expenses for a grand total of $82,927.10. RX-6.

7. USDA RD paid JP Morgan Chase $56,837.98 for their loss under the loan guarantee program. Narrative, RX-6.

8. Treasury has collected an additional $3,169.99 towards the debt. RX-8 @ p. 1 of 3.

9. The remaining amount due of $53,684.99 was transferred to Treasury for collection on March 27, 2012. Narrative, RX-8 @ p. 2 of 3.

10. The potential Treasury collection fees are $15,031.80. Narrative, RX-8 @ p. 2 of 3.

11. Mr. Davis has been employed for less than one year. His new job began eight months ago.

12. He owes money for a car loan, a personal loan, West Virginia Income taxes, past utility bills, past cable bills and there is an outstanding judgment on a repossessed automobile. His employment is more than 50 miles round trip.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $53,684.99 exclusive of potential Treasury fees for the mortgage loan extended to him and under the loan guarantee program.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $15,031.80.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is NOT entitled to administratively garnish the wages of the Petitioner at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After five months, RD may re-assess the Petitioner's financial position.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: NORMA A. SAUCEDO.
Docket No. 12-0122.
Decision and Order.
Filed April 24, 2012.

AWG.

Ugochi Anaebere, Esq. and William E. Keitel, Esq for Petitioner.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

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

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

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 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
$201,961.36	
+ 9,537.06	Lender Expenses to Sell Property (*see* RX 8, p. 11 for detail)
$211,498.42	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 $11.70 per hour. In 2011, Petitioner Saucedo's disposable pay (within the meaning of 31 C.F.R. § 285.11) averaged roughly $*** per month; currently, her disposable pay is roughly $*** to $*** 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 $*** to $*** per month. Petitioner Saucedo's former husband pays child support for the 11-year old, averaging $** 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.

_____

In re: JESSICA ROGERS, a/k/a JESSICA BURROWS.
Docket No. 12-0307.
Decision and Order.
Filed April 24, 2012.

AWG.

ADMINISTRATIVE WAGE GARNISHMENT ACT

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On March 26, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-10 on April 5, 2012. On/about April 9, 2012, Ms. Rogers filed her Narrative and her Financial Statement which I now label as PX-1 and PX-2, respectively. On April 19, 2012, at the time set for the hearing, both parties were available. Ms. Michelle Tanner represented RD. Ms. Rogers was self-represented. The parties were sworn.

Petitioner has been employed for less than one year.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On October 31, 2008, Petitioner and Thomas Willis obtained a loan for the purchase of a primary home mortgage loan in the amount of $83,640.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase their home on a property located in Talladega, Alabama, WV. RX-2.

2. Prior to signing the loan, the borrowers signed RD form 1980-21 (Loan Guarantee). RX- 1 @ p. 2 of 3.

3. The Borrowers became delinquent. The loan was accelerated for foreclosure on/about March 12, 2010. Narrative, RX-3 @ p. 1 of 3.

4. At the foreclosure sale of May 4, 2010, the property was purchased by a JP Morgan Chase for $69,700.00. Narrative, RX-3 @ page 2 of 3.

5. The property was subsequently appraised on May 13, 2010 for $31,000 "AS IS." RX-4 @ p. 1 of 8.

6. The property was sold on September 27, 2010 for $36,500.00. RX-5 @ p. 3 of 5.

7. The borrower owed $79,300.18 for principal, plus $6,948.53 for interest, plus $91.15 for protective advancements, for a total of $86,339.86 to pay off the RD loan. Narrative, RX-7.

8. In addition, under the loan guarantee program, borrower owes an additional $6,055.06 for fees and expenses for a grand total of $92,394.92. RX-7.

9. USDA RD paid JP Morgan Chase $51,901.78 for their loss under the loan guarantee program. Narrative, RX-7.

10. The remaining amount due of $51,901.78 was transferred to Treasury for collection on April, 3, 2012. Narrative, RX-10 @ p. 2 of 3.

11. The potential Treasury collection fees are $14,532.50. Narrative, RX-10 @ p. 2 of 3.

12. Mr. Rogers has been employed for less than one year. Her new job began six months ago as a home visiting health care nurse where she drives long distances to her clientele. PX-1, 2, Testimony.

13. Ms. Rogers has recently remarried. Her new husband is not employed outside their home and is a full time care-giver for his grandmother. Ms.

Rogers, her minor child, her new husband and his grandmother live rent-free in his grandmother's house.

14. RD was permitted to ask open-ended questions concerning the grandmother's social security contribution to the household income. RD agreed that the grandmother's social security income was offset by the various household expenses and her out of pocket medical expenses – hence it will not be included in any future Financial Hardship Calculation.

15. Thomas Willis, the other borrower, filed Chapter 7 bankruptcy.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $51,901.78 exclusive of potential Treasury fees for the mortgage loan extended to her and under the loan guarantee program.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $14,532.50.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is NOT entitled to administratively garnish the wages of the Petitioner at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After seven months, RD may re-assess the Petitioner's financial position.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: JENNIFER DRAPER.
Docket No. 12-0306.
Decision and Order.
Filed April 25, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On March 26 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-4 on March 29, 2012. Petitioner filed her Narrative on April 12, 2011. Following the hearings, RD filed additional documentation on May 2, 2012 showing the amount of the original loan and monthly payment due. RX-5 to RX-7. On April 18, 2012, at the time set for the hearing, both parties were available. Ms. Michelle Tanner represented RD. Ms. Draper was self represented. The parties were sworn.

Petitioner is unemployed and living in transitional housing for Homeless Female Veterans.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

ADMINISTRATIVE WAGE GARNISHMENT ACT

Findings of Fact

1. On June 1, 2000, Petitioner obtained a loan for the assumptions of a mortgage on a primary home in the amount of $51,513.01 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase her home on a property located in Willis, Texas. RX-1.

2. The Borrower became delinquent. The loan was accelerated for foreclosure on March 23, 2003. Narrative, RX-2.

3. The home was sold in a judicial sale on April 6, 2004 for $50,000.00. RX-3 @ p. 1 of 6.

4. Prior to the sale the Borrower owed $57,639.44 for principal, plus $6,079.42 for interest, plus $3,534.44 for fees, plus $77.10 for interest on fees, and $64.16 for late charges for a total of $67,394.56 to pay off the RD loan. Narrative, RX-4 @ 1 of 4.

5. After application of the judicial sale proceeds, the borrower owed $17,444.56. RX-4 @ p. 1 of 4.

6. Treasury has collected an additional $1,297.56 towards the debt. RX-4 @ 2 of 4.

7. The remaining amount due of $16,147.00 was transferred to Treasury for collection on March 27, 2012. RX-4 @ p.3 of 4.

8. The potential Treasury collection fees are $4,844.10. RX-4 @ p. 3 of 4.
9. Ms. Draper is unemployed.

10. Ms. Draper raised an issue of whether the mortgage servicer improperly increased her interest rate or alternately retracted her Interest Subsidy agreement. RX-1 @ p. 6 of 6.

11. Ms. Draper was unable to show that she successfully reapplied for the interest subsidy annually or showed that her income still qualified for the subsidy.

12. RD provided an amortization table showing the original loan amount and monthly payments due. RX- 5 – RX-7.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $16,147.00 exclusive of potential Treasury fees for the mortgage loan extended to her.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $4,844.10.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is NOT entitled to administratively garnish the wages of the Petitioner at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After one year, RD may re-assess the Petitioner's financial position.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: JOSHUA GRIFFEN.
Docket No. 12-0299.
Decision and Order.
Filed April 25, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

ADMINISTRATIVE WAGE GARNISHMENT ACT

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On March 26, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-10 on April 5, 2012. On April 17, 2012, at the time set for the hearing, both parties were available. Ms. Michelle Tanner represented RD. Mr. Griffin was self-represented. The parties were sworn.

Following the hearing, Mr. Griffen filed his Financial Statement and a payroll stub which I now label as PX-1 & 2, respectively.

Petitioner has been employed for more than one year.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On November 22, 2004, Petitioner obtained a loan for the purchase of a primary home mortgage loan in the amount of $54,000.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase a home on a property located in Cole Camp, Missouri. RX-2.

2. Prior to signing the loan, the borrower signed RD form 1980-21 (Loan Guarantee). RX- 1 @ p. 2 of 2.

3. The Borrower became delinquent. The loan was accelerated for foreclosure and the notice of a judicial sale was advertised on/about May 10, 2010. Narrative, RX-3 @ p. 1 of 5.

4. At the foreclosure sale of May 4, 2010, the property was purchased by a BAC Home Loans Servicing for $30,447.00. Narrative, RX-3 @ page 4 of 5.

5. The property was subsequently appraised on August 16, 2010 for $29,000 "AS IS." RX-4 @ p. 1 of 9.

6. The property was listed on September 8, 2010 "AS IS" for $34,900.00. RX-5 @ p. 1 of 4.

7. The property was sold on March 1, 2011 for $17,000. RX-5 @ p. 2 of 4.

8. RD adjusted the lender's claim for reimbursement downward $14,463.61 due to negligence in marketing the property. RX-6 @ p. 1 of 11 and p. 11 of 11.

9. The borrower owed $51,507.00 for principal, plus $3,465.43 for interest, plus $2461.17 for protective advancements, plus $74.76 for interest on protective advance for a total of $57,508.36 to pay off the RD loan. Narrative, RX-7.

10. In addition, under the loan guarantee program, borrower owes an additional $7,458.97 for fees and expenses for a grand total of $64,967.33. RX-7.

11. USDA RD paid JP Morgan Chase $29,726.95 for their loss under the loan guarantee program. Narrative, RX-7.

12. Treasury has received $7970.00 toward the debt. RX-10 @ p. 1 of 3.

13. The remaining amount due of $21,773.95 was transferred to Treasury for collection on April, 3, 2012. Narrative, RX-10 @ p. 2 of 3.

14. The potential Treasury collection fees are $6,096.71. Narrative, RX-10 @ p. 2 of 3.

15. Mr. Griffen has been employed for more than one year. Testimony, PX-1.

16. Mr. Griffen raised the issue of financial hardship. I prepared a Financial Hardship Calculation.[1] Mr. Griffen is married. There is one wage earner in the family and there are four minor children in the household. (PX-1). Mr. Griffen's paystub included pay for overtime hours. (PX-2). I calculated his gross pay at his straight time pay rate for a 40 hour week and it closely matched, or was less than, his stated monthly wages in his financial statement. Since under the financial hardship calculation no wage garnishment was authorized (even though the wages utilized in the calculation were gross straight time wages) there was no need to further refine the calculation by apportioning the payroll stub taxes, heath care costs, etc. between weekly total pay vs weekly straight time pay.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $21,773.95 exclusive of potential Treasury fees for the mortgage loan extended to him and under the loan guarantee program.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $6,096.71.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is not entitled to administratively garnish the wages of the Petitioner at this time.

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[1] The Financial hardship calculation is not posted on the OALJ website.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After twelve months, RD may re-assess the Petitioner's financial position.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: LAURA DOMBKOWSKI.
Docket No. 12-0269.
Decision and Order.
Filed April 27, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the petition of Laura Dombkowski ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the U.S. Department of Agriculture, Rural Development ("USDA-RD"; "Respondent"), and if established, the propriety of imposing administrative wage garnishment. By Order issued on March 29, 2012, the parties were directed to file and exchange information and documentation and the matter was set for a hearing to commence by telephone on April 26, 2012.

On March 29, 2012, Respondent filed a Narrative, together with supporting documentation, identified as exhibits RX-1 through RX-9. Petitioner did not submit any evidence.

At the date and time that the hearing was scheduled, Petitioner did not respond to telephone calls. Testimony was given by Respondent's representative, Michelle Tanner, of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri and Respondent's documents were admitted to the record.

On the basis of the entire record before me, the following Findings of Fact and Conclusions of Law and Order will be entered:

Findings of Fact

1. On July 20, 2007, Petitioner and her husband obtained a loan from JP Morgan Chase Bank ("Lender") in the amount of $191,700.00 to finance the purchase of property in Thompson, Connecticut, as evidenced by a Promissory Note. RX-2.

2. Before obtaining the Note, Petitioner signed a single family loan guarantee on June 19, 2007, certifying that if USDA-RD paid a loss claim to the lender, she would reimburse USDA-RD for the loss. RX-1.

3. Petitioner defaulted on the mortgage, and the Lender acquired the property at a foreclosure sale held on April 21, 2009 at a bid of $214,711.39. RX-4.

4. At the time of the sale, Petitioner owed $239,503.18 loan, which amount includes accumulated fees, interest and the costs of foreclosure. RX-4; RX-3.

5. The property was sold by the Lender after the foreclosure sale for $132,000.00. RX-6.

6. After the proceeds from the sale were applied Petitioner owed $99,937.94 for the loss claim paid by USDA-RD to the Lender. RX-7.

7. Petitioner's account was referred to the U.S. Department of Treasury ("Treasury") for collection as required by law. RX-8.

8. The account at Treasury now amounts to $92,947.91, plus potential fees of $26,025.42. RX-9.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Petitioner is indebted to USDA-RD in the amount of $92,947.91 exclusive of potential Treasury fees for the remaining balance on the mortgage loan extended to her.

3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

4. Pursuant to the regulations pertaining to debt collection by wage garnishment, Petitioner's disposable income supports wage garnishment at the legal maximum percentage. See, 31 C.F.R. §§ 900-904; 31 U.S.C. §3717.

5. There is no evidence of hardship as defined by law or regulation.

6. The Respondent is entitled to administratively garnish the wages of the Petitioner at the regulatory and statutory maximum of 15%.

7. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment 90 days from the date of this Decision and Order.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in her address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk's Office.

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In re: NICHOLAS DOMBKOWSKI.
Docket No. 12-0270.
Decision and Order.
Filed April 27, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the petition of Nicholas Dombkowski ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the U.S. Department of Agriculture, Rural Development ("USDA-RD"; "Respondent"), and if established, the propriety of imposing

administrative wage garnishment. By Order issued on March 29, 2012, the parties were directed to file and exchange information and documentation and the matter was set for a hearing to commence by telephone on April 26, 2012.

On March 29, 2012, Respondent filed a Narrative, together with supporting documentation, identified as exhibits RX-1 through RX-9. Petitioner did not submit any evidence.

At the date and time that the hearing was scheduled, Petitioner did not respond to telephone calls. Testimony was given by Respondent's representative, Michelle Tanner, of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri and Respondent's documents were admitted to the record.

On the basis of the entire record before me, the following Findings of Fact and Conclusions of Law and Order will be entered:

Findings of Fact

1. On July 20, 2007, Petitioner and his wife obtained a loan from JP Morgan Chase Bank ("Lender") in the amount of $191,700.00 to finance the purchase of property in Thompson, Connecticut, as evidenced by a Promissory Note. RX-2.

2. Before obtaining the Note, Petitioner signed a single family loan guarantee on June 19, 2007, certifying that if USDA-RD paid a loss claim to the lender, he would reimburse USDA-RD for the loss. RX-1.

3. Petitioner defaulted on the mortgage, and the Lender acquired the property at a foreclosure sale held on April 21, 2009 at a bid of $214,711.39. RX-4.

4. At the time of the sale, Petitioner owed $239,503.18 loan, which amount includes accumulated fees, interest and the costs of foreclosure. RX-4; RX-3.

5. The property was sold by the Lender after the foreclosure sale for $132,000.00. RX-6.

6. USDA-RD paid the Lender a loss of $99,937.94. RX-7.

7. After the proceeds from the sale were applied Petitioner owed $99,937.94. RX 5 - RX-7.

8. Petitioner's account was referred to the U.S. Department of Treasury ("Treasury") for collection as required by law. RX-8.

9. The account at Treasury now amounts to $92,947.91, plus potential fees of $26,025.42. RX-9.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Petitioner is indebted to USDA-RD in the amount of $92,947.91 exclusive of potential Treasury fees for the remaining balance on the mortgage loan extended to him.

3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

4. Pursuant to the regulations pertaining to debt collection by wage garnishment, Petitioner's disposable income supports wage garnishment at the legal maximum percentage. See, 31 C.F.R. §§ 900-904; 31 U.S.C. §3717.

5. There is no evidence of hardship as defined by law or regulation.

6. The Respondent is entitled to administratively garnish the wages of the Petitioner at the regulatory and statutory maximum of 15%.

7. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment 90 days from the date of this Decision and Order.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk's Office.

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In re: BRIAN FISHER.
Docket No. 12-0286.
Decision and Order.
Filed May 1, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

ADMINISTRATIVE WAGE GARNISHMENT ACT

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On April 10, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-10 on April 3, 2012. Mr. Fisher filed his Financial Statement on April 26, 2012 which I now label as PX-1. On May 1, 2012, at the time set for the hearing, both parties were available. Ms. Michelle Tanner represented RD. Mr. Fisher was self-represented. The parties were sworn.

Petitioner has been employed for less than one year.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On June 6, 2006, Petitioner obtained a loan for the purchase of a primary home mortgage loan in the amount of $199,920.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase a home on a property located in Joshua Tree, California. RX-2.

2. Prior to signing the loan, the borrower signed RD form 1980-21 (Loan Guarantee). RX- 1 @ p. 2 of 2.

3. The Borrower became delinquent. The loan was accelerated for foreclosure and the notice of a judicial sale was advertised on/about January 10, 2011. Narrative, RX-3 @ p. 1 of 2.

4. At the foreclosure sale of January 10, 2011, the property was purchased by a JP Morgan Chase Bank for $54,400.00. Narrative, RX-3 @ p. 2 of 2.

5. The property was subsequently appraised on August 16, 2010 for $53,000.00 "AS IS." RX-4 @ p. 5 of 7, RX 5 @ p. 1 of 6.

6. The property was sold on February 2, 2011 for $51,500.00. RX-5 @ p. 2 of 6, 4 of 6.

7. The borrower owed $192,970.94 for principal, plus $14,780.44 for interest, plus $1,647.90 for protective advancements, plus $22.64 for interest on protective advance for a total of $209,421.92 to pay off the RD loan. Narrative, RX-7.

8. In addition, under the loan guarantee program, borrower owes an additional $7,617.74 for fees and expenses for a grand total of $217,039.66. RX-7.

9. USDA RD paid JP Morgan Chase $151,047.01 for their loss under the loan guarantee program. Narrative, RX-7.

10. Treasury has received $4,578.00 toward the debt. RX-10 @ p. 3 of 5.

11. The remaining amount due of $146,486.01 was transferred to Treasury for collection on April, 17, 2012. Narrative, RX-10 @ p. 4 of 5.

12. The potential Treasury collection fees are $41,016.08. Narrative, RX-10 @ p. 4 of 5.

13. Mr. Fisher has been employed for less than one year.

14. Mr. Fisher stated that his wife received a IRS form 1099-C from the lender. RD stated that the 1099-C was not issued at RD's request.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $146,486.01 exclusive of potential Treasury fees for the mortgage loan extended to him and under the loan guarantee program.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $41,016.08.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is not entitled to administratively garnish the wages of the Petitioner at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After four months, RD may re-assess the Petitioner's financial position.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: STACI L. WICKLAND.
Docket No. 12-0283
Decision and Order
Filed May 4, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if

established, the terms of any repayment prior to imposition of an administrative wage garnishment. On April 10, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-5 on April 10, 2012. On April 25, 2012, at the time set for the hearing, both parties were available. Ms. Michelle Tanner represented RD. Ms. Wickland was represented by Brian Webb, Esq. The parties were sworn.

Following the hearing, on May 2, 2012 RD forwarded a correction to the interest portion of the debt due from Petitioner. RX 4 and RX-5 (Revised 5/2/2012). Petitioner is a full time parent and is unemployed because the available employment in her local area did not pay the cost of her child care.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On January 27, 1999, Petitioner obtained a loans for the mortgage on a primary home in the amount of $51,240.00, from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase her home on a property located in Caldwell, Idaho. RX-1.

2. The Borrower became delinquent. The loan was accelerated for foreclosure on July 24, 2009. Narrative, RX-2 @ p. 1 of 8.

3. The home was sold in a "short sale" on January 28, 2010 for $28,395.48. Narrative, RX-3 @ p. 1 of 24, 12 of 24.

4. Prior to the sale the Borrower owed $48,016.05 for principal, plus $2,515.92 for interest, plus $375.00 for fees, plus $21.88 for interest on fee balance, plus $39.96 for late charges for a total of $50,968.81 to pay off the RD loan. Narrative, RX-4 @ 1 of 2 (Rev 5/2/2012).

5. Treasury collected $5,939.00 under the tax offset program (TOP) toward the balance due. RX-4 @ 1 of 2 (Rev 5/2/2012).

6. Treasury collected an additional $2851.38. RX-5 @ p. 1 of 3 (Revised 5/2/2012).

7. After application of the short sale and TOP proceeds, the borrower owed $16,634.33. RX-4 @ 1 of 2 (Rev 5/2/2012).

8. The remaining amount due of $16,634.33 was transferred to Treasury for collection on May 2, 2012. RX-5 @ p. 2 of 3 (Revised 5/2/2012).

9. The potential Treasury collection fees are $4,657.61. RX-5 @ p. 2 of 3 (Revised 5/2/2012).

10. Ms. Wickland is not employed.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $16,634.33 exclusive of potential Treasury fees for the mortgage loan extended to her.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $4,657.61.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is NOT entitled to administratively garnish the wages of the Petitioner at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After one year, RD may re-assess the Petitioner's financial position.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: VIOLET ATKINSON.
Docket No. 12-0280.
Decision and Order.
Filed May 5, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On April 10, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-11 on April 10, 2012. Petitioner filed her financial statement on April 20, 2012 which I now label as PX-1. On April 24, 2012, at the time set for the hearing, both parties were available. Ms. Michelle Tanner represented RD. Ms. Atkinson was self-represented. The parties were sworn.

Ms. Atkinson has been employed for more than one year although she receives less than full time employment from her employer.

Following the hearing, Ms. Atkinson filed her payroll information which I now label as PX- 2, respectively.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On June 24, 2008, Petitioner and Jeffrey Gripe obtained a loan for the purchase of a primary home mortgage loan in the amount of $81,632.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase a home on a property located in Ladd, Illinois. RX-2.

2. Prior to signing the loan, the borrowers signed RD form 1980-21 (Loan Guarantee). RX- 1 @ p. 2 of 2.

3. The borrowers became delinquent. The loan was accelerated for foreclosure on/about February 2, 2010. Narrative, RX-4 @ p. 1 of 3, RX-7 @ p. 5 of 13.

4. After notice, the property was acquired by assignment on August 31, 2010 FmHA. Narrative, RX-4 @ p.2 of 3, RX-7 @ p.5 of 13.

5. The property was subsequently appraised on November 17, 2010 for $61,900.00 "AS IS." RX-7 @ p. 6 of 13. The broker's price opinion on November 16, 2010 was that the value was $ 59,900.00 "AS IS." RX-7 @ p. 6 of 13.

6. The property was listed for sale on March 18, 2011 "AS IS" for $45,000.00. RX-7 @ p. 6 of 13.

7. The property was sold on April 15, 2011 for $38,500.00. RX-6 @ p. 2 of 4.

8. RD adjusted the lender's claim for reimbursement downward $12,573.72 due to negligence in marketing the property. RX-7 @ p. 12 of 13.

9. The borrowers owed $81,027.85 for principal, plus $9,321.53 for interest, plus $2,045.25 for protective advancements, plus $50.35 for interest on protective advance for a total of $92,444.98 to pay off the RD loan. Narrative, RX-8.

10. In addition, under the loan guarantee program, borrowers owe an additional $13,562.84 for fees and expenses for a grand total of $106,007.82. RX-7.

11. USDA RD paid JP Morgan Chase $49,093.61 for their loss under the loan guarantee program. Narrative, RX-8.

12. The remaining amount due of $49,093.61 was transferred to Treasury for collection on April, 5, 2012. Narrative, RX-11 @ p. 4 of 5.

13. The potential Treasury collection fees are $13,746.21. Narrative, RX-11 @ p. 4 of 5.

14. Violet Atkinson is jointly and severally liable for the remaining debt.

15. Ms. Atkinson has been employed for more than one year. Testimony, PX-1.

16. Ms. Atkinson raised the issue of financial hardship. I prepared a Financial Hardship Calculation.[1] There is one wage earner in the household. (PX-1). I calculated her gross pay at her straight time pay rate for a 35 hour week. Ms. Atkinson lives very modestly. Since under the Financial Hardship Calculation no wage garnishment was authorized (even though the wages utilized in the calculation were gross straight time wages) there was no need to further refine the calculation by apportioning the payroll stub taxes, heath care costs, etc. between weekly total pay vs weekly straight time pay.

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[1] The Financial hardship calculation is not posted on the OALJ website.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $49,093.61 exclusive of potential Treasury fees for the mortgage loan extended to her and under the loan guarantee program.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $13,746.21.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is not entitled to administratively garnish the wages of the Petitioner at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After twelve months, RD may re-assess the Petitioner's financial position.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: KASEY HEARN.
Docket No. 12-0318.
Decision and Order.
Filed May 9, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On April 10, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-11 on April 17, 2012. Petitioner filed her financial information (which I now label as PX-1) with her Petition for hearing on March 26, 2012. On May 1, 2012, at the time set for the hearing, both parties were available. Ms. Michelle Tanner represented RD. Ms. Hearn was self-represented. The parties were sworn.

Petitioner has been employed for more than one year.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On November 6, 2006, Petitioner and Joseph Robinson obtained a loan for the purchase of a primary home mortgage loan in the amount of $80,000.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase a home on a property located in Phillipsburg, Pennsylvania. RX-2.

2. Prior to signing the loan, the borrowers signed RD form 1980-21 (Loan Guarantee). RX- 1 @ p. 2 of 2.

3. The Borrower became delinquent. The loan was accelerated for foreclosure and the notice of a judicial sale was advertised on/about June 4, 2010. Narrative, RX-4.

4. Petitioner attempted to sell the home as a "short sale," but the potential buyer did not complete the transaction. RX-3 @ p. 2 of 7.

5. At the foreclosure sale of June 4, 2010, the property was acquired by the lender, Pennsylvania Housing Finance Agency (PHFA) for $2,566,42. RX-4. @ p. 11-16.

6. The property was listed for sale at $70,000.00. RX-6 @ p. 1 – 3.

7. The property was sold on May 27, 2011 for $63,200.00. RX-6 @ p. 7 of 9.

8. The borrower owed $78,437.93 for principal, plus $8,896.80 for interest, plus $6,524.20 for protective advancements, plus $169.98 for interest on protective advance for a total of $94,028.91 to pay off the RD loan. Narrative, RX-8.

9. In addition, under the loan guarantee program, borrower owes an additional $16,345.65 for fees and expenses for a grand total of $110,374.56. RX-8.

10. USDA RD paid PHFA $44,115.41 for their loss under the loan guarantee program. Narrative, RX-8.

11. Treasury has received $6,281.00 toward the debt. RX-11 @ p. 1 of 5.

12. The remaining amount due of $37,851.41 was transferred to Treasury for collection on April, 12, 2012. Narrative, RX-11 @ p. 4 of 5.

13. The potential Treasury collection fees are $10,598.39. Narrative, RX-11 @ p. 4 of 5.

14. Ms. Hearn is jointly and severally liable on the debt.

15. Ms. Hearn has been employed for more than one year. Testimony, PX-1.

16. Ms. Hearn raised the issue of financial hardship. I prepared a Financial Hardship Calculation.[1] Ms. Hearn is divorced. There is one wage earner in the family unit which includes two minor children in the household. (PX-1). She receives court ordered child support on a sporadic basis. Since under the financial hardship calculation no wage garnishment was authorized (even though the wages utilized in the calculation were gross straight time wages) there was no need to further refine the calculation by apportioning the payroll stub taxes, heath care costs, etc. between weekly total pay vs. weekly straight time pay.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $37,851.41 exclusive of potential Treasury fees for the mortgage loan extended to her and under the loan guarantee program.

[1] The Financial hardship calculation is not posted on the OALJ website.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $10,598.39.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is not entitled to administratively garnish the wages of the Petitioner at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After twelve months, RD may re-assess the Petitioner's financial position.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: SUSAN BAZZEL.
Docket No. 12-0284.
Decision and Order.
Filed May 15, 2012.

AWG.

Don Warnes, Esq. for Petitioner.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On April 10, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as

to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-10 on April 10, 2012. Petitioner filed her financial information (which I now label as PX-1) on/about April 20, 2012. On or about May 14, 2012, Ms. Bazzel submitted an updated financial statement (which I now label as PX-2). On May 7, 2012, at the time re-set for the hearing by agreement, both parties were available. Ms. Michelle Tanner represented RD. Ms. Bazzel was represented by Don Warnes, Esq. The parties were sworn.

Petitioner has been employed for more than one year.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On September 28, 2006, Petitioner and Derrick Bazzel obtained a loan for the purchase of a primary home mortgage loan in the amount of $93,494.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase a home on a property located in Union Grove, Alabama. RX-2.

2. Prior to signing the loan, the borrowers signed RD form 1980-21 (Loan Guarantee). RX- 1 @ p. 2 of 3.

3. The Borrowers became delinquent. The loan was accelerated for foreclosure and the notice of a judicial sale was advertised on/about April 3, 2010. Narrative, RX-3 @ p. 3 of 5, RX-6 @ 3 of 20.

4. At the foreclosure sale of May 6, 2010, the property was acquired by the lender, JP Morgan Chase for $96,050.00. RX-6. @ p. 3 of 20.

5. The property was listed for sale on June 18, 2010 at $89,900.00. RX-6 @ p. 4 of 20.

6. The property was sold to a third party on August 4, 2010 for $86,000.00. RX-6 @ p. 4 of 20.

7. The borrowers owed $89,892.17 for principal, plus $7,810.79 for interest, plus $712.93 for protective advancements, plus $12.70 for interest on protective advance for a total of $98,428.59 to pay off the RD loan. Narrative, RX-7.

8. In addition, under the loan guarantee program, borrowers owe an additional $13,063.09 for fees and expenses for a grand total of $111,491.68. RX-7.

9. USDA RD paid the lender $25,353.49 for their loss under the loan guarantee program. Narrative, RX-7.

10. Treasury has received $4,233.00 toward the debt. RX-10 @ p. 1 of 3.

11. The remaining amount due of $21,137.49 was transferred to Treasury for collection on April, 9, 2012. Narrative, RX-10 @ p. 2 of 3.

12. The potential Treasury collection fees are $5,918.50. Narrative, RX-10 @ p. 2 of 3.

13. Derrick Bazzel was discharged from Chapter 7 bankruptcy on/about June 16, 2011. RX-9@ p. 2 of 6.

14. Ms. Bazzel remains liable on the debt.

15. Ms. Bazzel has been employed for more than one year. Testimony, PX-1.

16. Ms. Bazzel raised the issue of financial hardship. I prepared a Financial Hardship Calculation.[1] Ms. Bazzel is divorced. There is one wage earner in the family unit which includes one minor child in the household.

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[1] The Financial hardship calculation is not posted on the OALJ website.

(PX-1). She receives court ordered child support. Since under the financial hardship calculation no wage garnishment was authorized (even though the wages utilized in the calculation were gross straight time wages) there was no need to further refine the calculation by apportioning the payroll stub taxes, heath care costs, etc.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $21,137.49 exclusive of potential Treasury fees for the mortgage loan extended to her and under the loan guarantee program.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $5,918.50.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is not entitled to administratively garnish the wages of the Petitioner at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time. After twelve months, RD may re-assess the Petitioner's financial position.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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ADMINISTRATIVE WAGE GARNISHMENT ACT

In re: WADE HALL.
Docket No. 12-0273.
Decision and Order.
Filed May 16, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Wade Hall ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"); and if established, the propriety of imposing administrative wage garnishment. On March 5, 2012, Petitioner requested a hearing. By Order issued March 29, 2012, a hearing was scheduled to commence on May 15, 2012, and the parties were directed to provide information and documentation to the Hearing Clerk for the Office of Administrative Law Judges for the United States Department of Agriculture.

On April 2, 2012, Respondent filed a Narrative, together with supporting documentation ("RX-1 through RX-10"), which is hereby formally entered into the record. Petitioner did not file any documentation.

On the date and time scheduled for the hearing, attempts were made to contact Petitioner at the telephone number that he provided, but he could not be reached. The notice of hearing was not returned to the Hearing Clerk for the United States Department of Agriculture Office of Administrative Law Judges ("Hearing Clerk") as undeliverable.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law, and Order shall be entered:

Findings of Fact

1. On July 31, 2007, the Petitioner obtained a home mortgage loan in the amount of $113,100.00 from lender Chemical Bank ("Lender") for the purchase of real property located in Lake City, Michigan, evidenced by Promissory Note. RX-2.

2. Before executing the Promissory Note for the loan, on July 11, 2007, Petitioner requested a Single Family Housing Loan Guarantee from the USDA-RD, which was granted. RX-1.

3. By executing the guarantee request, Petitioner certified that he would reimburse USDA RD for the amount of any loss claim on the loan paid to the Lender or its assigns. RX-1.

4. The Lender assigned the loan to US Bank ("US Bank") on September 11, 2009, and the assignment was duly recorded in Missaukee County, Michigan on September 24, 2009.

5. The loan fell into default and was accelerated for foreclosure. RX-4.
6. US Bank acquired the property at foreclosure sale on November 13, 2009 in the amount of $95,000.00. RX-3.

7. USDA-RD and US Bank devised a property disposition plan that valued the property for less than the sale price. RX-4; RX-5.

8. The property sold to a third party on June 21, 2010 for $75,000.00. RX-5.

9. AT the time of the foreclosure sale, the total due on Petitioner's mortgage account was $136,952.69, consisting of principal, interest, fees and advances. RX-9.

10. USDA-RD paid a loss claim in the amount of $58,275.01 to US Bank on December 23, 2010. RX-7.

11. USDA-RD referred the loss payment to the U.S. Department of Treasury ("Treasury") as a debt of the Petitioner.

12. The debt is at Treasury for collection in the amount of $53,443.01, plus potential fees of $14,964.04.

13. Petitioner was advised of intent to garnish his wages to satisfy the indebtedness.

14. Petitioner timely requested a hearing, but failed to appear, or provide any evidence.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

3. Respondent has established the existence of a valid debt due to the United States from Petitioner.

4. Respondent is entitled to administratively garnish the wages of the Petitioner at the statutory maximum amount of 15%.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment at this time.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: RONALD HAYNES.
Docket No. 12-0272.
Decision and Order.
Filed May 16, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Ronald Haynes ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"); and if established, the propriety of imposing administrative wage garnishment. On March 5, 2012, Petitioner requested a hearing. By Order issued March 29, 2012, a hearing was scheduled to commence on May 15, 2012, and the parties were directed to provide information and documentation to the Hearing Clerk for the Office of Administrative Law Judges for the United States Department of Agriculture.

On April 3, 2012, Respondent filed a Narrative, together with supporting documentation ("RX-1 through RX-11"). Petitioner had filed documents with his Petition, and I hereby designate that evidence as

"PX-1". On May 11, 2012, Petitioner's attorney moved for a Decision and Order on the Record. By Order entered May 15, 2012, I granted Petitioner's motion and canceled the hearing.

Petitioner's and Respondent's evidence is hereby formally entered into the record.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law, and Order shall be entered:

Findings of Fact

1. On January 31, 2008, the Petitioner received a home mortgage loan in the amount of $96,900.00 from lender JP Morgan Chase Bank ("Lender") for the purchase of real property located in Kershaw, South Carolina, evidenced by Promissory Note. RX-2.

2. Before executing the Promissory Note for the loan, on November 6, 2007, Petitioner requested a Single Family Housing Loan Guarantee from the USDA-RD, which was granted. RX-1.

3. By executing the guarantee request, Petitioner certified that he would reimburse USDA RD for the amount of any loss claim on the loan paid to the Lender or its assigns. RX-1.

4. The loan fell into default and the loan was accelerated for foreclosure. RX-4.

5. Foreclosure was initiated by an assignee of the Lender, Chase Home Finance LLC (Chase). PX-1.

6. Chase warranted to the Court that it specifically waived a deficiency judgment on any balance on the loan. PX-1.

7. By judgment issued May 1, 2009 by the Master in Equity for Kershaw County, South Carolina, a decree of foreclosure specifically stating that the Lender and its assigns did not seek a deficiency. PX-1.

8. By Order of the Master in Equity for Kershaw County, South Carolina, recorded on August 17, 2009, the foreclosed property was sold to Homesales, Inc. for $79,719.00. RX-3.

9. USDA-RD and Chase devised a property disposition plan that valued the property for less than the sale price to Homesales Inc. RX-4.

10. USDA-RD paid a loss claim in the amount of $57,941.21 to JP Morgan Chase Bank in March, 2010, through its servicing lender Chase Home Finance LLC. RX-7.

11. USDA-RD referred the loss payment to the U.S. Department of Treasury ("Treasury") as a debt of the Petitioner.

12. Petitioner was advised of intent to garnish his wages to satisfy the indebtedness.

13. Petitioner timely requested a hearing, but subsequently requested a Decision on the Record.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. The Lender and its assignee specifically waived a deficiency for the difference between the foreclosure sale proceeds and the amount due on Petitioner's mortgage account in the jurisdiction of Kershaw County, South Carolina.

3. By waiving a deficiency, Lender and Chase put Petitioner on notice that Petitioner's debt to Lender was satisfied, as recorded by the Court entering judgment of foreclosure.

4. Petitioner shall not be held responsible for USDA-RD's failure to exercise due diligence when paying an unsubstantiated deficiency which was not duly established in law.

5. Respondent has failed to establish the existence of a valid debt from Petitioner to USDA-RD.[1]

6. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have not been met because Respondent has failed to establish the existence of a valid debt.

7. Petitioner's account at Treasury shall be abolished and canceled.

8. Any amounts debited at Treasury against the alleged indebtedness shall be returned to Petitioner.

9. Respondent is not entitled to administratively garnish the wages of the Petitioner.

10. Treasury has no authority to undertake any collection action as Petitioner is not indebted to the United States.

ORDER

For the foregoing reasons, the wages of Petitioner shall **NOT** be subjected to administrative wage garnishment at this time.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

In re: JEWEL KING.
Docket No. 12-0273.
Decision and Order.
Filed May 16, 2012.

AWG.

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[1] It is clear that USDA-RD would be able to pursue an action against the Lender and its assignee for the payment of a deficiency which the Lender warranted did not exist.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Jewel King ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"); and if established, the propriety of imposing administrative wage garnishment. On March 5, 2012, Petitioner requested a hearing. By Order issued March 29, 2012, a hearing was scheduled to commence on May 15, 2012, and the parties were directed to provide information and documentation to the Hearing Clerk for the Office of Administrative Law Judges for the United States Department of Agriculture.

On April 19, 2012, Respondent filed a Narrative, together with supporting documentation ("RX-1 through RX-10"), which is hereby formally entered into the record. Petitioner did not file any documentation.

On the date and time scheduled for the hearing, attempts were made to contact Petitioner at the telephone number that she provided, but she could not be reached. The notice of hearing was not returned to the Hearing Clerk for the United States Department of Agriculture Office of Administrative Law Judges ("Hearing Clerk") as undeliverable.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law, and Order shall be entered:

Findings of Fact

1. On September 14, 2007, the Petitioner[2] obtained a home mortgage loan in the amount of $61,000.00 from Eagle Mortgage Brokerage, Inc.

[2] Another Borrower, Kevin Daringer, also obtained the loan at issue herein.

("Lender") for the purchase of real property located in Lincoln, Illinois, evidenced by Promissory Note. RX-2.

2. Before executing the Promissory Note for the loan, on August 27, 2007, Petitioner requested a Single Family Housing Loan Guarantee from the USDA-RD, which was granted. RX-1.

3. By executing the guarantee request, Petitioner certified that she would reimburse USDA RD for the amount of any loss claim on the loan paid to the Lender or its assigns. RX-1.

4. The Lender sold the loan to Draper and Kramer Mortgage Corp, which then sold the loan to JP Morgan Chase Bank ("Chase"). RX-3.

5. The loan fell into default and was accelerated for foreclosure. RX-3.

6. Chase acquired the property at foreclosure sale on June 30, 2010 for the sum of $27,200.00. RX-4.

7. USDA-RD and Chase devised a property disposition plan that valued the property for less than the sale price. RX-4; RX-5.

8. The property sold to a third party on October 7, 2010 for the sum of $35,000.00. RX-5.

9. At the time of the sale, the total due on Petitioner's mortgage account was $80,062.44, consisting of principal, interest, fees and advances. RX-8.

10. After crediting the account for sale proceeds, USDA-RD paid a loss claim in the amount of $39,805.57 to Chase. RX-7.

11. Petitioner failed to negotiate a settlement of the loss claim with USDA-RD, and on January 18, 2012, USDA-RD referred the loss payment to the U.S. Department of Treasury ("Treasury") as a debt of the Petitioner. RX-9; RX-10.

12. The debt is at Treasury for collection in the amount of $33,960.57, plus potential fees of $9,508.96. RX-10.

13. Petitioner was advised of intent to garnish her wages to satisfy the indebtedness.

14. Petitioner timely requested a hearing, but failed to appear, or provide any evidence.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

3. Respondent has established the existence of a valid debt due to the United States from Petitioner.

4. There is no evidence that garnishment would represent a hardship.

5. Respondent is entitled to administratively garnish the wages of the Petitioner at the statutory maximum amount of 15%.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment at this time.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in her address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: KRISTINA MARSH.
Docket No. 12-0274.
Decision and Order.
Filed May 16, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Ballard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Kristina Marsh ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"); and if established, the propriety of imposing administrative wage garnishment. On March 5, 2012, Petitioner requested a hearing. By Order issued March 29, 2012, a hearing was scheduled to commence on May 15, 2012, and the parties were directed to provide information and documentation to the Hearing Clerk for the Office of Administrative Law Judges for the United States Department of Agriculture.

On April 4, 2012, Respondent filed a Narrative, together with supporting documentation ("RX-1 through RX-12"), which is hereby formally entered into the record. Petitioner filed a Consumer Debtor Financial Statement ("PX-1") with her petition.

The parties' documents are hereby formally admitted to the record. The hearing commenced as scheduled, and Petitioner testified, representing herself. Michelle Tanner testified on behalf of USDA-RD.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law, and Order shall be entered:

Findings of Fact

1. On February 16, 2007, the Petitioner[1] obtained a home mortgage loan in the amount of $132,600.00 from Wells Fargo Bank ("Lender") for the purchase of real property located in Birchwood Wisconsin, evidenced by Promissory Note. RX-2.

2. Before executing the Promissory Note for the loan, on January 5, 2007, Petitioner requested a Single Family Housing Loan Guarantee from the USDA-RD, which was granted. RX-1.

3. By executing the guarantee request, Petitioner certified that she would reimburse USDA RD for the amount of any loss claim on the loan paid to the Lender or its assigns. RX-1.

4. The loan fell into default and was accelerated for foreclosure. RX-3.

5. Wells Fargo acquired the property at foreclosure sale on January 5, 2010 for the sum of $93,500.00. RX-4.

6. USDA-RD and Wells Fargo prepared a property disposition plan that valued the property for less than the sale price. RX-4; RX-5; RX-6.

7. The property sold to a third party on September 10, 2010 for $74,900.00. RX-7.

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[1] Petitioner's ex-husband Chad Marsh also obtained the loan at issue herein.

8. The sales price was greater than the recovery appraised value. RX-6; RX-7.

9. At the time of the sale, the total due on Petitioner's mortgage account was $164,318.86, consisting of principal, interest, fees and advances. RX-6; RX-8.

10. After crediting the account for sale proceeds, USDA-RD paid a loss claim in the amount of $83,318.77 to Lender. RX-7; RX-10.

11. Petitioner failed to negotiate a settlement of the loss claim with USDA-RD, and on USDA-RD referred the loss payment to the U.S. Department of Treasury ("Treasury") as a debt of the Petitioner. RX-9; RX-10; RX-11; RX-12.

12. The debt is at Treasury for collection in the amount of $83,318.77, plus potential fees of $23,329.26 RX-11.

13. Petitioner was advised of intent to garnish her wages to satisfy the indebtedness.

14. Petitioner timely requested a hearing and provided evidence of her financial condition.

15. Petitioner testified that she is working with a lawyer regarding her outstanding debts.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

3. Respondent has established the existence of a valid debt due to the United States from Petitioner.

4. There is evidence that garnishment at the statutory maximum would represent a hardship.

5. Respondent is entitled to administratively garnish the wages of the Petitioner at the amount of 5%, but not until Petitioner has had opportunity to consult with her attorney regarding resolving the matter.

6. Garnishment at 5% of Petitioner's wages may begin after 90 days from the date this Decision and Order is issued, or on August 17, 2012.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment at this time.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in her address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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ADMINISTRATIVE WAGE GARNISHMENT ACT

In re: CLINT REEVES.
Docket No. 12-0275.
Decision and Order.
May 16, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Clint Reeves ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"); and if established, the propriety of imposing administrative wage garnishment. On March 5, 2012, Petitioner requested a hearing. By Order issued March 29, 2012, a hearing was scheduled to commence on May 16, 2012, and the parties were directed to provide information and documentation to the Hearing Clerk for the Office of Administrative Law Judges for the United States Department of Agriculture.

Respondent filed a Narrative, together with supporting documentation ("RX-1 through RX-11"), which is hereby formally entered into the record. Petitioner filed a Consumer Debtor Financial Statement ("PX-1"), and a copy of a letter from First United Bank ("PX-2").

The parties' documents are hereby formally admitted to the record. The hearing commenced as scheduled, and Petitioner testified, representing himself. Michelle Tanner testified on behalf of USDA-RD. On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law, and Order shall be entered:

Findings of Fact

1. On August 18, 2004, the Petitioner[1] obtained a home mortgage loan in the amount of $46,000.00 from First United Bank and Trust Company ("Lender") for the purchase of real property located in Ada, Oklahoma, evidenced by Promissory Note. RX-2.

2. Before executing the Promissory Note for the loan, on July 8, 2004, Petitioner requested a Single Family Housing Loan Guarantee from the USDA-RD, which was granted. RX-1.

3. By executing the guarantee request, Petitioner certified that he would reimburse USDA RD for the amount of any loss claim on the loan paid to the Lender or its assigns. RX-1.

4. On November 16, 2006, Petitioner and the Lender modified the loan to increase the amount due on the account. RX-3.

5. Petitioner subsequently moved from the property, but his wife remained. Petitioner's testimony.

6. The loan fell into default and was accelerated for foreclosure, but Petitioner's wife did not communicate with him about the status of the mortgage account. *Id*.

7. The Lender acquired the property at foreclosure sale on January 4, 2008 for the sum of $55,508.00. RX-4.

8. The property was sold to a third party on August 21, 2008 for $37,000.00. RX-5.

9. After the sales proceeds were applied to the balance due on Petitioner's account, there was a deficiency of $22,372.29. RX-7; RX-8.

10. USDA-RD paid a loss claim in the amount of $22,372.29 to Lender. RX-8.

11. Petitioner failed to negotiate a settlement of the loss claim with USDA-RD, and on USDA-RD referred the loss payment to the U.S.

[1] Petitioner's deceased wife also obtained the loan at issue herein.

Department of Treasury ("Treasury") as a debt of the Petitioner. RX-9; RX-10; RX-11.

12. The debt is at Treasury for collection in the amount of $22,372.29, plus potential fees of $6,264.24. RX-11.

13. Petitioner was advised of intent to garnish his wages to satisfy the indebtedness.

14. Petitioner timely requested a hearing and provided evidence of his financial condition.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

3. The letter from Lender to Petitioner establishes only that Petitioner is not indebted to Lender, since USDA-RD paid Lender deficiencies pursuant to the guarantee agreement between Petitioner and USDA-RD.

4. Respondent has established the existence of a valid debt due to the United States from Petitioner.

5. There is evidence that garnishment at the statutory maximum would represent a hardship.

6. Respondent is entitled to administratively garnish the wages of the Petitioner at the amount of 10%, beginning **July, 2013** (upon the anticipated payment of Petitioner's vehicle promissory note). See, PX-2.

ORDER

For the foregoing reasons, the wages of Petitioner shall NOT be subjected to administrative wage garnishment at this time.

Wage garnishment may be effected at not more than 10% beginning July, 2013.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: SHERRY CASTRO, F/K/A SHERRY GARRETT.
Docket No. 12-0298.
Decision and Order.
Filed May 17, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

ADMINISTRATIVE WAGE GARNISHMENT ACT

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Sherry Castro ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"); and if established, the propriety of imposing administrative wage garnishment. On March 19, 2012, Petitioner requested a hearing. By Order issued April 2, 2012, a hearing was scheduled to commence on May 16, 2012, and the parties were directed to provide information and documentation to the Hearing Clerk for the Office of Administrative Law Judges for the United States Department of Agriculture.

On April 13, 2012, Respondent filed a Narrative, together with supporting documentation ("RX-1 through RX-10"), which is hereby formally entered into the record. Petitioner filed correspondence ("PX-1") denying the indebtedness and ability to pay at the time she filed her Petition for a hearing. Petitioner did not respond to my Order directing her to provide contact information. The Order was not returned to the Hearing Clerk for the United States Department of Agriculture Office of Administrative Law Judges ("Hearing Clerk") as undeliverable. My staff made attempts to locate the Petitioner without success.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law, and Order shall be entered:

Findings of Fact

1. On February 27, 2007, the Petitioner obtained a home mortgage loan in the amount of $120,000.00 from JP Morgan Chase Bank ("Lender") for the purchase of real property located in Caledonia, Mississippi, evidenced by Promissory Note. RX-2.

2. Before executing the Promissory Note for the loan, on February 2, 2007, Petitioner requested a Single Family Housing Loan Guarantee from the USDA-RD, which was granted. RX-1.

3. By executing the guarantee request, Petitioner certified that she would reimburse USDA RD for the amount of any loss claim on the loan paid to the Lender or its assigns. RX-1.

4. The Lender assigned the loan to Chase Home Finance, LLC ("Chase"), which substituted Nationwide Trustee Services Inc. as Substitute Trustee ("Trustee"). RX-3.

5. The loan fell into default and was accelerated for foreclosure. RX-3.

6. A foreclosure sale was held, at which the assignee of the Trustee, the Federal National Mortgage Association acquired the property and then sold it to Homesales, Inc. for the sum of $90,950.00. RX-3.

7. USDA-RD developed a property disposition plan that valued the property for less than the sale price. RX-4.

8. The property sold to a third party on September 24, 2010 for the sum of $105,000.00. RX-5.

9. At the time of the sale, the total due on Petitioner's mortgage account was $142,234.29, consisting of principal, interest, fees and advances. RX-6.

10. After crediting the account for sale proceeds, USDA-RD paid a loss claim in the amount of $36,381.04. RX-6; RX-7.

11. Petitioner failed to negotiate a settlement of the loss claim with USDA-RD, and thereafter, USDA-RD referred the loss payment to the U.S. Department of Treasury ("Treasury") as a debt of the Petitioner. RX-8; RX-9.

12. The debt is at Treasury for collection in the amount of $30,317.04, plus potential fees of $8,572.77. RX-10.

13. Petitioner was advised of intent to garnish her wages to satisfy the indebtedness.

14. Petitioner timely requested a hearing, and provided a statement denying liability and asserting her inability to pay any indebtedness.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

3. Respondent has established the existence of a valid debt due to the United States from Petitioner.

4. Petitioner's credible statements that garnishment would represent a hardship have been given weight, but Petitioner's failure to document her financial condition undermines her contentions.

5. Respondent is entitled to administratively garnish the wages of the Petitioner at the statutory maximum amount of 15%.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment at this time.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in her address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: BRANDON MILLER.
Docket No. 12-0301.
Decision and Order.
Filed May 17, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the Petition filed on March 19, 2012 by Brandon Miller ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the U.S. Department of Agriculture, Rural Development ("USDA-RD"; "Respondent"), and if established, the propriety of imposing administrative wage garnishment. By Order issued on March 29, 2012, the parties were directed to file and exchange information and documentation and the matter was set for a hearing to commence by telephone on May 16, 2012.

On April 23, 2012, Respondent filed a Narrative, together with supporting documentation, identified as exhibits RX-1 through RX-11. Petitioner submitted correspondence and a Consumer Debtor Financial Statement with his petition. PX-1. All documents are hereby admitted to the record.

At the date and time that the hearing was scheduled, Petitioner did not respond to telephone calls. Accordingly, on the basis of the entire record

before me, the following Findings of Fact and Conclusions of Law and Order will be entered:

Findings of Fact

1. On July 23, 2008, Petitioner and his wife obtained a loan from JP Morgan Chase Bank ("Lender") in the amount of $111,734.00 to finance the purchase of property in Lehigh Acres, Florida, as evidenced by a Promissory Note. RX-2.

2. Before obtaining the Note, Petitioner signed a single family loan guarantee on June 7, 2008, certifying that if USDA-RD paid a loss claim to the lender, he would reimburse USDA-RD for the loss. RX-1.

3. The loan fell into default, and according to a certificate of title filed by the Clerk of the Court for Lee County, the property was sold to Homesales Inc. at a foreclosure sale held on October 4, 2010. RX-4.

4. USDA-RD generated documents suggest that the sum paid at foreclosure sale was $10,100.00. RX-6 at page 5.

5. The property was then offered for sale at a price of $50,000.00 upon a property disposition plan approved by USDA-RD in November 2010. RX-4.

6. On February 5, 2011, the property sold to a third party for $42,500.00. RX-5.

7. At the time of the foreclosure sale, the amount due on the account was $134,382.37, consisting of principal, interest, fees and advances. RX-6; RX-7.

8. USDA-RD paid the Lender a loss of $83,393.39. RX-6; RX-7.

9. The loss was established as a debt due from Petitioner. RX-9.

10. Petitioner did not compromise the debt with USDA-RD pursuant to notification dated August 13, 2011. RX-8.

11. Petitioner's account was referred to the U.S. Department of Treasury ("Treasury") for collection as required by law. RX-8.

12. The account at Treasury now amounts to $81,463.39, plus potential fees of $22,809.75. RX-10.

13. Petitioner asserts that he should not be held accountable due to predatory lending practices by the Lender.

14. Petitioner's Consumer Debtor Financial Statement reflects that he has no dependents.

15. Petitioner's income exceeds expenses.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Petitioner is indebted to USDA-RD in the amount of $81,463.39, exclusive of potential Treasury fees for the remaining balance on the mortgage loan extended to him.

3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

4. Petitioner's claims of predatory lending practices are not a defense to the instant action, which is limited to the propriety of wage garnishment to collect a valid debt to the United States.

5. Pursuant to the regulations pertaining to debt collection by wage garnishment, Petitioner's disposable income supports wage garnishment at the legal maximum percentage. See, 31 C.F.R. §§ 900-904; 31 U.S.C. §3717.

6. There is no evidence of hardship as defined by law or regulation.

7. The Respondent is entitled to administratively garnish the wages of the Petitioner at the regulatory and statutory maximum of 15%.

8. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment 90 days from the date of this Decision and Order.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk's Office.

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In re: ANGELA PURNELL.
Docket No. 12-0303.
Decision and Order.
Filed May 17, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Angela Purnell ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"); and if established, the propriety of imposing administrative wage garnishment. On March 19, 2012, Petitioner requested a hearing. By Order issued March 30, 2012, a hearing was scheduled to commence on May 17, 2012, and the parties were directed to provide information and documentation to the Hearing Clerk for the Office of Administrative Law Judges for the United States Department of Agriculture.

On May 2, 2012, Respondent filed a Narrative, together with supporting documentation ("RX-1 through RX-11"). Petitioner filed correspondence denying the indebtedness and supporting her claims regarding the fitness of habitability of the real estate ("PX-1"). The parties' submissions are hereby formally entered into the record.

The hearing commenced as scheduled. Petitioner represented herself and credibly testified. Respondent was represented by Michelle Tanner, of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri. Ms. Tanner credibly testified regarding USDA-RD's submissions.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law, and Order shall be entered:

Findings of Fact

1. On February 25, 2008, the Petitioner obtained a home mortgage loan in the amount of $282,653.00 from C& F Mortgage Corporation ("Lender") for the purchase of real property located in Laplata, Maryland, evidenced by Promissory Note. RX-2.

2. Before executing the Promissory Note for the loan, on January 31, 2008, Petitioner requested a Single Family Housing Loan Guarantee from the USDA-RD, which was granted. RX-1.

3. By executing the guarantee request, Petitioner certified that she would reimburse USDA-RD for the amount of any loss claim on the loan paid to the Lender or its assigns. RX-1.

4. The Lender sold the loan to JP Morgan Chase Bank ("Chase"). RX-2.
5. Petitioner discovered the existence of health-threatening mold after inspection of the property, and she did not reside at the property. Testimony of Petitioner.

6. Petitioner attempted to resolve the matter with Chase and USDA-RD, but fell ill and could not continue to pursue a resolution. Id.

7. The loan fell into default and was accelerated for foreclosure. RX-3.
8. A foreclosure sale was held on September 2, 2009, and Chase acquired the property for the sum of $201,233.30. RX-3.

9. USDA-RD and Chase developed a property disposition plan that valued the property for less than the sale price. RX-5.

10. The property subsequently was sold to a third party for the sum of $158,700.00. RX-6.

11. At the time of the sale, the total due on Petitioner's mortgage account was $341,093.93, consisting of principal, interest, fees and advances. RX-6; RX-7.

12. After crediting the account for sale proceeds, USDA-RD paid a loss claim in the amount of $155,763.69. RX-7.

13. Petitioner failed to negotiate a settlement of the loss claim with USDA-RD, and thereafter, USDA-RD referred the loss payment to the U.S. Department of Treasury ("Treasury") as a debt of the Petitioner. RX-8; RX-9.

14. The debt is at Treasury for collection in the amount of $155,763.69, plus potential fees. RX-10; RX-11.

15. Petitioner was advised of intent to garnish her wages to satisfy the indebtedness.

16. Petitioner timely requested a hearing, and provided a statement denying liability.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

3. Respondent has established the existence of a valid debt due to the United States from Petitioner.

4. Petitioner's credible statements regarding the fitness of habitability of the real estate do not constitute defenses to the debt, but rather would have been defenses to the foreclosure action.

5. Petitioner's income would withstand wage garnishment, given her stated expenses.

6. Because of the circumstances leading to Petitioner's delinquency and the amount of the debt, wage garnishment shall be suspended for a period of six months to allow Petitioner to pursue legal action or otherwise resolve the debt.

7. Respondent is entitled to administratively garnish the wages of the Petitioner at the statutory maximum amount of 15%, but not until December 18, 2012.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment at the statutory maximum beginning December 18, 2012.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.12.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in her address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: WILLIAM HEATH JAMES.
Docket No. 12-0319.
Decision and Order.
Filed May 22, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the Petition filed on March 26, 2012 by William Heath James ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the U.S. Department of Agriculture, Rural Development ("USDA-RD"; "Respondent"), and if established, the propriety of imposing administrative wage garnishment. By Order issued on April 3, 2012, the parties were directed to file and exchange information and documentation and the matter was set for a hearing to commence by telephone on May 22, 2012.

On May 11, 2012, Respondent filed a Narrative, together with supporting documentation, identified as exhibits RX-1 through RX-10. Petitioner submitted correspondence with his petition. PX-1. All documents are hereby admitted to the record.

The hearing commenced as scheduled, and Petitioner represented himself and testified. Michele Tanner of the New Program Initiatives Branch of Rural Development, USDA, Saint Louis, Missouri represented Respondent and testified.

On the basis of the entire record before me, the following Findings of Fact and Conclusions of Law and Order will be entered:

Findings of Fact

ADMINISTRATIVE WAGE GARNISHMENT ACT

1. On February 28, 2007, Petitioner obtained a loan from JP Morgan Chase Bank ("Lender") in the amount of $101,530.00 to finance the purchase of real property in Teague, Texas, as evidenced by a Promissory Note. RX-2.

2. Before obtaining the Note, Petitioner signed a single family loan guarantee on February 10, 2007, certifying that if USDA-RD paid a loss claim to the lender, he would reimburse USDA-RD for the loss. RX-1.

3. The loan fell into default, and on December 7, 2010, the Lender acquired the property at a foreclosure sale for the amount of $89,250.00. RX-3.

4. The property was then offered for sale at a price of $58,500.00, based upon a property disposition plan approved by USDA-RD. RX-4.

5. On April 25, 2011, the property sold to a third party for $50,500.00. RX-5.

6. At the time of the foreclosure sale, the amount due on the account was $117,523.54, consisting of principal, interest, fees and advances. RX-6; RX-7.

7. USDA-RD paid the Lender a loss of $61,954.91. RX-6; RX-7.

8. The loss was established as a debt due from Petitioner. RX-8.

9. On January 18, 2012, Petitioner's account was referred to the U.S. Department of Treasury ("Treasury") for collection as required by law. RX-10.

10. The account at Treasury now amounts to $60,927.61, which includes credit for Petitioner's 2011 income tax refund, which was used to offset the debt. RX-10.

11. In addition to the principal of the debt, potential fees of $17,059.73 may be collected by Treasury. RX-10.

12. Petitioner credibly testified about his income and expenses, and advised that his wife is currently not working.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Petitioner is indebted to USDA-RD in the amount of $60,927.61, exclusive of potential Treasury fees for the remaining balance on the mortgage loan extended to him.

3. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

4. Petitioner's credibly testified that the Lender refused to accept his offer to pay his delinquency, but that is not sufficient to establish that the debt was improper.

5. Pursuant to the regulations pertaining to debt collection by wage garnishment, Petitioner's disposable income supports wage garnishment at the legal maximum percentage of 15%. See, 31 C.F.R. §§ 900-904; 31 U.S.C. § 3717.

6. Garnishment shall be suspended for a period of ninety (90) days from the date of this Order to allow Petitioner to attempt to resolve the debt.

7. The Respondent is entitled to administratively garnish the wages of the Petitioner at the regulatory and statutory maximum of 15% **after July 23, 2012**.

8. Treasury shall remain authorized to undertake any and all other appropriate collection action.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment 90 days from the date of this Decision and Order.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact.

Copies of this Decision and Order shall be served upon the parties and counsel by the Hearing Clerk's Office.

_____

In re: HAE SUN BOWMAN.
Docket No. 12-0316.
Decision and Order.
Filed May 23, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Hae Sun Bowman ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to

the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"); and if established, the propriety of imposing administrative wage garnishment. On March 26, 2012, Petitioner requested a hearing.

By Order issued March 30, 2012, a hearing was scheduled to commence on May 22, 2012, and the parties were directed to provide information and documentation to the Hearing Clerk for the Office of Administrative Law Judges for the United States Department of Agriculture.

On May 2, 2012, Respondent filed a Narrative, together with supporting documentation ("RX-1 through RX-5"), which is hereby formally entered into the record. Petitioner did not respond to my Order directing filing of submissions. The Order was not returned to the Hearing Clerk for the United States Department of Agriculture Office of Administrative Law Judges ("Hearing Clerk") as undeliverable. At the scheduled time for the hearing, my staff made attempts to locate the Petitioner without success.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law, and Order shall be entered:

Findings of Fact

1. On November 4, 2005, the Petitioner obtained a home mortgage loan in the amount of $56,500.00 from USDA-RD for the purchase of real property located in Cheboygan, Michigan, evidenced by Promissory Note. RX-1.

2. The loan fell into default and was accelerated for foreclosure. RX-2.

3. USDA-RD acquired the property at a foreclosure sale held on July 18, 2008 for the sum of $15,260.00. RX-3.

4. At the time of the sale, the total due on Petitioner's mortgage account was $61,238.03 consisting of principal, interest, fees and advances. RX-4.

5. After crediting the account for sale proceeds, Petitioner owed USDA-RD $45,979.03. RX-4.

6. Petitioner failed to negotiate a settlement of the loss claim with USDA-RD, and thereafter, on January 9, 2012, USDA-RD referred the loss payment to the U.S. Department of Treasury ("Treasury") as a debt of the Petitioner. RX-3; RX-4.

7. The debt is at Treasury for collection in the amount of $45,979.03, plus potential fees of $12,873.85. RX-5.

8. Petitioner was advised of intent to garnish wages to satisfy the indebtedness.

9. Petitioner timely requested a hearing, and provided a statement denying liability.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

3. Respondent has established the existence of a valid debt due to the United States from Petitioner.

4. Petitioner failed to appear at the hearing, and failed to document her financial condition and thereafter I am unable to determine whether a hardship would warrant suspension of wage garnishment proceedings.

5. Respondent is entitled to administratively garnish the wages of the Petitioner at the statutory maximum amount of 15%.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment at this time.

Petitioner is encouraged to negotiate repayment of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in address, phone numbers, or other means of contact.

The Hearing Clerk shall serve this Decision and Order upon the parties.

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In re: LORI JOHNSON.
Docket No. 12-0282.
Decision and Order.
Filed May 30, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an

administrative wage garnishment. On April 10, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing. The hearing date was mutually reset on April 26, 2012.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-9 on April 10, 2012. Petitioner filed her financial information (which I now label as PX-1) on/about May 23, 2012. On May 16, 2012, at the time re-set for the hearing by agreement, both parties were available. Ms. Michelle Tanner represented RD. Ms. Johnson was self-represented. The parties were sworn.

Petitioner has been employed for more than one year.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On June 6, 2008, Petitioner and Dallas Johnson obtained a loan for the purchase of a primary home mortgage loan in the amount of $173,469.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase a home on a property located in Tallahassee, Florida. RX-2.

2. Prior to signing the loan, the borrowers signed RD form 1980-21 (Loan Guarantee). RX- 1 @ p. 2 of 3.

3. The Borrowers became delinquent. The loan was accelerated for foreclosure and the notice of a judicial sale was advertised on/about April 17, 2010. Narrative, RX-3 @ p. 2 of 11.

4. The property was appraised on July 30, 2010 at $99,000. RX-5 @ p. 1 of 6.

5. The property was purchased by a third party for $105,000.00 on November 12, 2010. RX-5. @ p. 3 of 6.

6. The borrowers owed $172,972.64 for principal, plus $16,011.82 for interest, plus $5,601.10 for protective advancements, plus $89.85 for interest on protective advance for a total of $194,675.41 to pay off the RD loan. Narrative, RX-6 @ p. 13 of 13.

7. In addition, under the loan guarantee program, borrowers owe an additional $15,664.87 for fees and expenses for a grand total of $210,340.28. RX-6 @ p. 13 of 13.

8. USDA RD paid the lender $96,219.46 for their loss under the loan guarantee program. Narrative, RX-6 @ p. 13 of 13.

9. Treasury has received $9,120.82 toward the debt. RX-6 @ p. 13 of 13.

10. The remaining amount due of $96,219.46 was transferred to Treasury for collection on April, 6, 2012. Narrative, RX-9 @ p. 2 of 5.

11. The potential Treasury collection fees are $26,941.45. Narrative, RX-9 @ p. 2 of 5.

12. Lori Johnson is jointly and severally liable on the debt.

13. Ms. Johnson has been employed for more than one year. Testimony, PX-1.

14. Ms. Johnson raised the issue of financial hardship. I prepared a Financial Hardship Calculation.[1] Ms. Johnson is married. There are two wage earners in the family unit. (PX-1). Ms. Johnson and her husband are providing parental assistance for their parents. Ms. Johnson's financial statement stated gross bi-weekly income so I utilized an on-line Federal tax calculator. I apportioned the family unit Federal, social security and Medicare taxes between the wage earners. I allowed all expenses provided by Ms. Johnson, however the family monthly disposable income was

[1] The Financial hardship calculation is not posted on the OALJ website.

sufficient that a wage garnishment of 15% of her monthly disposable income will be allowed under the calculations.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $96,219.46 exclusive of potential Treasury fees for the mortgage loan extended to her and under the loan guarantee program.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $26,941.45.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is entitled to administratively garnish the wages of the Petitioner at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment of up to 15% of her monthly disposable income at this time.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

In re: JESSIE NORMAN.
Docket No. 12-0377.
Decision and Order.
Filed June 7, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Jessie Norman ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"); and if established, the propriety of imposing administrative wage garnishment. On April 23, 2012, Petitioner requested a hearing. By Order issued May 10, 2012, a hearing was scheduled to commence on June 6, 2012, and the parties were directed to provide information and documentation to the Hearing Clerk for the Office of Administrative Law Judges for the United States Department of Agriculture.

On May 7, 2012, Respondent filed a Narrative, together with supporting documentation ("RX-1 through RX-6"). On June 5, 2012, Petitioner filed a Consumer Debtor Financial Statement ("PX-1"). The parties' submissions are hereby formally entered into the record.
The hearing commenced as scheduled. Petitioner represented herself and credibly testified. Respondent was represented by Michelle Tanner, of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri. Ms. Tanner credibly testified regarding USDA-RD's submissions.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law, and Order shall be entered:

Findings of Fact

1. On June 16, 2005, the Petitioner obtained a home mortgage loan in the amount of $72,424.00 from USDA-RD for the purchase of real property located in Metcalfe, Mississippi, evidenced by Promissory Note and Deed of Trust. RX-1.

2. The loan fell into default and was accelerated for foreclosure on September 14, 2010. RX-2.

3. A foreclosure sale was held on September 12, 2011, and the property was sold to a third party for $27,850.00. RX-3.

4. After crediting the account for sale proceeds, the balance due on Petitioner's account with USDA-RD was $49,316.59. RX-3; RX-4.

5. Petitioner failed to negotiate a settlement of the loss claim with USDA-RD, and thereafter, USDA-RD referred the loss payment to the U.S. Department of Treasury ("Treasury") as a debt of the Petitioner. RX-3.

6. The debt is at Treasury for collection in the amount of $48,631.13, plus potential fees of $13,631.13. RX-5.

7. Petitioner was advised of intent to garnish her wages to satisfy the indebtedness.

8. Petitioner requested a hearing, and provided written submissions.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

3. Petitioner's request for a hearing was timely filed.

4. Respondent has established the existence of a valid debt due to the United States from Petitioner.

5. Wage garnishment at any amount would not allow Petitioner to keep an amount equal to 30 times the Federal minimum wage.

6. Petitioner has established the existence of a hardship as comprehended by prevailing statute and regulations.

7. Wage garnishment shall NOT be effected in this matter.

8. Treasury may implement other appropriate collection action.

ORDER

The Administrative Wage Garnishment may NOT proceed at this time. Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact. Petitioner may direct questions to USDA-RD's representatives, c/o:

USDA New Program Initiatives Branch
Rural Development Centralized Servicing Center
4300 Goodfellow Blvd. F-22
St. Louis, MO 63120
314-457-5592
314-457-4426 (facsimile)

Petitioner is advised that if she acquires the ability to negotiate a lump sum payment, she may be able to enter into a compromise settlement of the debt with the representatives of Treasury. The toll free number for Treasury's agent is **1-888-826-3127**.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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ADMINISTRATIVE WAGE GARNISHMENT ACT

In re: MICHELLE MURPHY.
Docket No. 12-0382.
Decision and Order.
Filed June 7, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER

This matter is before the Office of Administrative Law Judges ("OALJ") upon the request of Michelle Murphy ("Petitioner") for a hearing to address the existence or amount of a debt alleged to be due to the United States Department of Agriculture, Rural Development Agency ("Respondent"; "USDA-RD"); and if established, the propriety of imposing administrative wage garnishment. On April 23, 2012, Petitioner requested a hearing. By Order issued May 9, 2012, a hearing was scheduled to commence on June 6, 2012, and the parties were directed to provide information and documentation to the Hearing Clerk for the Office of Administrative Law Judges for the United States Department of Agriculture.

On May 8, 2012, Respondent filed a Narrative, together with supporting documentation ("RX-1 through RX-6"). Petitioner filed correspondence denying the indebtedness and supporting her position ("PX-1"). The parties' submissions are hereby formally entered into the record.

The hearing commenced as scheduled. Petitioner represented herself and credibly testified. Respondent was represented by Michelle Tanner, of the New Program Initiatives Branch of USDA-RD, Saint Louis, Missouri. Ms. Tanner credibly testified regarding USDA-RD's submissions.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law, and Order shall be entered:

Findings of Fact

1. On December 23, 2004, the Petitioner obtained a home mortgage loan in the amount of $79,000.00 from USDA-RD for the purchase of real property located in Kilgore, Texas, evidenced by Promissory Note and Deed of Trust. RX-1.

2. The loan fell into default and was accelerated for foreclosure. RX-2.

3. A foreclosure sale was held on October 5, 2010, and USDA-RD acquired the property for the sum of $46,365.00. RX-3.

4. USDA-RD and Chase developed a property disposition plan that valued the property for less than the sale price. RX-5.

5. At the time of the sale, the total due on Petitioner's mortgage account was $79,408.89 consisting of principal, interest, fees and advances. RX-4.

6. After crediting the account for sale proceeds, the amount due to USDA-RD was $33,052.89. RX-4; RX-5.

7. Petitioner failed to negotiate a settlement of the loss claim with USDA-RD, and thereafter, USDA-RD referred the loss payment to the U.S. Department of Treasury ("Treasury") as a debt of the Petitioner. RX-6.

8. The debt is at Treasury for collection in the amount of $32,329.00, plus potential fees of $9,052.12. RX-6.

9. Petitioner was advised of intent to garnish her wages to satisfy the indebtedness.

10. Petitioner requested a hearing, and provided written submissions.

11. Chase also specifically stated that the Borrowers were not personally liable for the payment of the debt.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. All procedural requirements for administrative wage offset set forth at 31 C.F.R. §285.11 have been met.

3. Petitioner's request for a hearing was not timely, and her wages have been garnished.

4. The amounts collected by Treasury through garnishment have been applied against Petitioner's account.

5. Respondent has established the existence of a valid debt due to the United States from Petitioner.

6. Petitioner has established the existence of a hardship as comprehended by prevailing statute and regulations.

7. Wage garnishment shall cease immediately and shall remain suspended until April, 2017, when it is anticipated that some of Petitioner's other debts shall be satisfied.

8. Amounts collected through wage garnishment and applied to Petitioner's account shall remain credited to the account.

9. Treasury may implement other appropriate collection action until the suspension on wage garnishment is lifted.

ORDER

1. The Administrative Wage Garnishment may NOT proceed at this time.

2. As of April, 2017, wage garnishment may be implemented at the appropriate legal percentage of Petitioner's Monthly Disposable Income.

3. By not later than February 28, 2017, Petitioner shall provide to Treasury's agents and to USDA-RD a complete and detailed account of her income and expenses.

4. Amounts collected and applied to Petitioner's account shall remain credited to the account.

5. Petitioner is advised that this Decision and Order does not prevent payment of the debt through offset of any federal money payable to Petitioner.

6. Petitioner is further advised that a debtor who is considered delinquent on debt to the United States may be barred from obtaining other federal loans, insurance, or guarantees. See, 31 C.F.R. § 285.13.

7. Until the debt is satisfied, Petitioner shall give to USDA-RD or those collecting on its behalf, notice of any change in his address, phone numbers, or other means of contact. Petitioner may direct questions to USDA-RD's representatives, c/o:

USDA New Program Initiatives Branch
Rural Development Centralized Servicing Center
4300 Goodfellow Blvd. F-22
St. Louis, MO 63120
314-457-5592
314-457-4426 (facsimile)

8. Petitioner is advised that if she acquires the ability to negotiate a lump sum payment, she may be able to enter into a compromise settlement of the debt with the representatives of Treasury. The toll free number for Treasury's agent is 1-888-826-3127.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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ADMINISTRATIVE WAGE GARNISHMENT ACT

In re: RESHUNDA BEEKS.
Docket No. 12-0315.
Decision and Order.
Filed June 11, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On April 10, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-4 on April 13, 2012. On May 30, 2012, at the time re-set for the hearing, both parties were available. Ms. Michelle Tanner represented RD. Ms. Beeks was self represented. The parties were sworn. During the hearing, Petitioner was encouraged to file her Financial Statements and payroll records by June 4, 2012, but none have been received.

Petitioner has been employed for more than one year.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On January 5, 2007, Petitioner obtained a loan for the purchase of a primary home in the amount of $67,913.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase her home on a property located in Amory, Mississippi. RX-1 @p. 1 of 9.

2. The Borrower became delinquent. The loan was accelerated for foreclosure on July 7, 2008. Narrative, RX-2 @ p. 1 of 5.

3. The home was sold in a "short sale" on January 10, 2011 for $31,200.00. Narrative, RX-3 @ p. 3 of 16.

4. Prior to the sale the Borrower owed $67,017.60 for principal, plus $10,705.32 for interest, plus $4,592.41 for fees, plus $246.21 for interest on the fee balance, plus $16.10 for late fees for a total of $82,577.64 to pay off the RD loan. Narrative, RX-4 @ 1 of 4.

5. After application of the short sale proceeds, the borrower owed $52,174.52 for the loans. RX-4 @ p. 1 of 4.

6. Treasury has collected an additional $5,203.00 towards the debt. RX-4 @ 1-2 of 4.

7. The remaining amount due of $46,971.52 was transferred to Treasury for collection on April 11, 2012. RX-4 @ p.3 of 4.

8. The potential Treasury collection fees are $13,152.03. RX-4 @ p. 3 of 4.

9. Ms. Beeks is has been employed for more than one year. She qualifies in Mississippi for the S.N.A.P. food program. She has three children for which she is due court ordered child support but for which the payer is, thus far, delinquent in his payments.

10. Ms. Beeks is liable for the debt.

11. I am unable to perform a Financial Hardship Calculation for the family unit until I am provided with financial statements and payroll stubs.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $46,971.52 exclusive of potential Treasury fees for the mortgage loan extended to her.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $13,152.03.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is entitled to administratively garnish the wages of the Petitioner at this time.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment at this time. After one year, RD may re-assess the Petitioner's financial position.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

_____

In re: MINDY FULFORD, K/N/A MINDY TUCKER.
Docket No. 12-0287.
Decision and Order.
Filed June 20, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by James P. Hurt, Hearing Officer.

DECISION AND ORDER

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On April 10, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-5 on April 27, 2012. Petitioner filed her Narrative on April 25, 2011 and additional payroll documents on May 16, 2012, which I now label as PX-1 and PX-2, respectively. On May 1, 2012, at the time set for the hearing, both parties were available. Ms. Michelle Tanner represented RD. Ms. Fulford was self represented. The parties were sworn.

Petitioner has remarried and has been employed for more than one year. On June 14, 2012, I held a follow up telephone hearing to clarify certain expense items.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On February 23, 1996, Petitioner and Robert Fulford, Jr. obtained two loans for the assumption of a mortgage on a primary home in the amount of $4,100.00 and $41,946.16, respectively from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) to purchase her home on a property located in Fitzgerald, Georgia. RX-1 @p. 1 of 14.

2. The borrowers became delinquent. The loans were accelerated for foreclosure on June 6, 2004. Narrative, RX-2 @ p. 5 of 14.

3. The home was sold in a "short sale" on October 15, 2004 for $28,000.00. Narrative, RX-4 @ p. 7 of 8.

4. Prior to the sale the borrowers owed $38,126.14 for principal, plus $1,642.82 for interest, plus $417.74 for fees for a total of $40,186.70 to pay off the RD loan # 841268. Narrative, RX-4 @ 8 of 8.

5. Prior to the sale the borrowers owed $3,363.18 for principal, plus $144.92 for interest for a total of $3,508.10 to pay off the RD loan # 841255. Narrative, RX-4 @ 8 of 8.

6. After application of the short sale proceeds, the borrower owed $15,789.94 for both loans. RX-4 @ p. 8 of 8.

7. Treasury has collected an additional $4,464.38 towards the debt. RX-4 @ 8 of 8.

8. The remaining amount due of $11,325.56 was transferred to Treasury for collection on April 25, 2012. RX-5 @ p.3 of 7.

9. The potential Treasury collection fees are $3,171.16. RX-5 @ p. 3 of 7.

10. Ms. Fulford is now remarried (Mindy Tucker) and has been employed for more than one year.

11. Mindy (Fulford) Tucker is jointly and severally liable for the debt.

12. Ms. Tucker's present husband and his 18 year old son contribute to the household income. There are six persons in her household including four children.

13. Ms. Tucker raised an issue of financial hardship. Testimony.

14. Ms. Tucker family unit has an outstanding debt for furniture for the next six months.

15.I performed a Financial Hardship Calculation for the family unit using Ms. Tucker's gross income less deductions and the net income statements for the other two wage earners in the household.

Conclusions of Law

1. Petitioner is indebted to USDA Rural Development in the amount of $11,325.56 exclusive of potential Treasury fees for the mortgage loan extended to her.

2. In addition, Petitioner is indebted for potential fees to the US Treasury in the amount of $3,171.16.

3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

4. The Respondent is entitled to administratively garnish the wages of the Petitioner at this time at the rate of 7.5% for the following six months and thereafter at 15% of the monthly disposable income from her income only.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment at this time. After one year, RD may re-assess the Petitioner's financial position.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: DEMETRIUS J. BROWN.
Docket No. 12-0341.
Decision and Order.
Filed June 22, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

1. The Hearing by telephone was held as scheduled on June 19, 2012. *See* "Hearing Notice and Prehearing Deadlines" filed April 27, 2012. Petitioner Brown failed to participate: he failed to be available at the telephone number[1] he provided on his Hearing Request (which he signed on March 2, 2012); he failed to file his current contact information as required by paragraph 14 of the Hearing Notice; and he failed to contact me through Marilyn Kennedy to advise how he could be reached by telephone.

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. Petitioner Brown failed to file a completed "Consumer Debtor Financial Statement" or anything, and he failed to testify. Petitioner Brown's Hearing Request (signed March 2, 2012 and filed on April 9, 2012), states that he does not owe the debt for the reason that the home was left with his wife; that FH (Farmers Home) was supposed to take his name off that property; and that apparently they did not do what they should have.

4. USDA Rural Development's Exhibits RX 1 through RX 5, plus Narrative, Witness & Exhibit List, were filed on May 11, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner. A copy of these documents was sent via express mail to Petitioner Brown at the Post Office Box he provided on his Hearing Request but returned to USDA Rural Development marked "UNCLAIMED." If Petitioner Brown wants his copy of these documents, he shall provide his current delivery address to Michelle Tanner and request that she send the

[1] No one answered; the recorded voice, speaking Spanish, did not identify the phone as that of Demetrius Brown.

documents to him again. Michelle Tanner's contact information is on the last page.

5. Petitioner Brown owes to USDA Rural Development a balance of **$54,031.97** (as of May 9, 2012) in repayment of **two** United States Department of Agriculture / Farmers Home Administration loans, one made in 1992, and the other made in 1995, for a home in Florida. The balance is now unsecured ("the debt"). *See* USDA Rural Development Exhibits RX 1 through RX 5 (esp. RX 1, RX 5 and RX 4, p. 10), plus Narrative, Witness & Exhibit List.

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **$54,031.97** would increase the current balance by $15,128.96, to $69,160.93. *See* USDA Rural Development Exhibits, esp. RX 5 and RX 4, p. 10, plus the testimony of Michelle Tanner.

7. The amount Petitioner Brown borrowed in 1992 was $48,500.00. RX 1. The amount Petitioner Brown borrowed in 1995 was $30,000.00. RX 1. After the loans had become delinquent, the loans were reamortized. RX 1. Reamortization made the loans current, by adding the delinquent amount to the principal balance. Reamortizations did not change the total amount owed, which all became principal. In 1998, the principal amount due on 1992 loan became $48,312.27. RX 1, p. 7. In 1998, the principal amount due on the 1995 loan became $30,785.43. RX 1, p. 9. Interest, of course, continued to accrue. Petitioner Brown did not keep the loans current; the payment due September 23, 1999, and those payments due thereafter, were not made. RX 2, p. 10.

8. The loans were accelerated for foreclosure on February 2, 2000. RX 2. The home was sold for $32,601.00 in a foreclosure sale on January 10, 2001. After the funds from the foreclosure sale ($32,601.00) were received by USDA Rural Development on February 23, 2001, the 1992 loan was credited in the amount of $20,442.61; and the 1995 loan was credited in the amount of $12,158.39.

$ 91,151.36	Unpaid balance of both loans before funds applied
- 32,601.00	Funds from the foreclosure sale

$ 58,550.36 Balance due following foreclosure ($36,328.34 plus $22,222.02)
=========
RX 5, and USDA Rural Development Narrative.

9. Interest stopped accruing on February 23, 2001, when the funds from the foreclosure sale were received by USDA Rural Development. Since then, ***offset*** of **income tax refunds** or other **Federal monies** (in 2004, 2006, and 2011, *see* RX 5) have reduced the balance due to **$54,031.97** ($31,809.95 plus $22,222.02).

10. Petitioner Brown provided no financial information, so there is no evidence for me to consider whether garnishment would cause Petitioner Brown financial hardship. I presume Petitioner Brown can withstand garnishment at 15% of his disposable pay in repayment of the debt. 31 C.F.R. § 285.11.

11. Petitioner Brown is responsible and able to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

12. Garnishment of Petitioner Brown's disposable pay is authorized. *See* paragraph 10. Petitioner Brown, you may want to telephone Treasury's collection agency to **negotiate** the repayment of the debt. Petitioner Brown, this will require **you** to telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Brown, 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 Brown, you may want to request apportionment of debt between you and the co-borrower. Petitioner Brown, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

14. Petitioner Brown owes the debt described in paragraphs 5 through 9.

15. Garnishment **up to 15%** of Petitioner Brown's disposable pay is authorized. 31 C.F.R. § 285.11.

16. **No refund** to Petitioner Brown of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.

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

ORDER

18. Until the debt is repaid, Petitioner Brown 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).

19. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment **up to 15%** of Petitioner Brown's disposable pay. 31 C.F.R. § 285.11.

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

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

_____

ADMINISTRATIVE WAGE GARNISHMENT ACT

In re: PAULA A. PEACE.
Docket No. 12-0330.
Decision and Order.
Filed June 27, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Peter M. Davenport, Chief Administrative Law Judge.

DECISION AND ORDER

This matter is before the Administrative Law Judge upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On April 20, 2012, a Prehearing Order was entered to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing on June 27, 2012.

The Respondent complied with that Order and a Narrative was filed, together with supporting documentation on May 21, 2012. The only material appearing in the record from the Petitioner are the attachments to her Request for Hearing. On the June 27, 2012 at the time set for the hearing, efforts to reach the Petitioner were unsuccessful and she will be deemed to have waived her right to a hearing.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On March 15, 1996, the Petitioner (and her then husband) received a home mortgage loan in the amount of $62,380.00 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) for property located in Tipton, Indiana. RX-1.

2. The loan was accelerated for foreclosure on January 28, 2010 due to monetary default and the property was sold at a foreclosure sale on July 7, 2011 with proceeds realized from that sale in the amount of $10,000.00, leaving a remaining balance due of $54,414.04. Unpaid interest in the amount of $3,151.79 was waived, making the total due $51,262.25. RX-5.

3. Treasury offsets totaling $3,794.00 exclusive of Treasury fees have been received. RX-4.

4. The remaining unpaid debt is in the amount of $47,858.25 exclusive of potential Treasury fees. RX-5-6.

Conclusions of Law

5. Petitioner is indebted to USDA Rural Development in the amount of $47,858.25 for the mortgage loan extended to her.

6. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

7. The Respondent is entitled to administratively garnish the wages of the Petitioner.

ORDER

For the foregoing reasons, the wages of Petitioner shall be subjected to administrative wage garnishment at the rate of 15% of disposable pay, or such lesser amount as might be specified in 31 C.F.R. § 285.11(i).

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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ADMINISTRATIVE WAGE GARNISHMENT ACT

In re: BRIAN YANCHESON AND DANIELLE YANCHESON.
Docket No. 12-0335.
Decision and Order.
Filed June 27, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Peter M. Davenport, Chief Administrative Law Judge.

DECISION AND ORDER

This matter is before the Administrative Law Judge upon the request of Brian Yancheson, for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On April 20, 2012, a Prehearing Order was entered to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt and setting the case for a telephonic hearing on June 27, 2012.

The Respondent complied with the Prehearing Order and a Narrative was filed, together with supporting documentation on May 11, 2012. The file reflects material the Petitioner filed with his Request for Hearing, but no other materials.

A telephonic hearing was held on June 27, 2012. At that hearing, both Brian Yancheson and the co-borrower Danielle Yancheson participated *pro se* and the Agency was represented by Michelle Tanner, Appeal Coordinator, Rural Development Centralized Servicing Center, United States Department of Agriculture, St. Louis, Missouri. All parties giving testimony were placed under oath to provide sworn testimony. During the hearing the Yanchesons acknowledged that prior to the foreclosure giving rise to the debt alleged to be due in this case, they had been in monetary default on the loan and entered into the loan modification agreement. Although the file suggests that no payments were made after the loan modification, Danielle Yancheson testified that they had made three payments before they became delinquent again as as a result of Mr.

Yancheson losing his job. She then although acknowledging the notices of publication in the file testified that the mortgage holder never notified them of the foreclosure proceedings but had the locks on the residence changed. When they contacted the bank, they were informed that nothing could be done unless they came up with a six figure amount.

The material submitted by the Respondent does not contain documentation of judicial foreclosure proceedings which might provide some additional insight as to whether in fact the Yanchesons were personally served in the proceeding or whether the note holder pursued or expressly waived right to a personal or deficiency judgment. Nor does the file contain the loss claim by the putative note holder. RX-1, the Loan Guarantee Document identifies the lender as JP Morgan Chase bank, N.A. Similarly, the Note in RX-2 identifies the lender as the same entity. Subsequent documents in the same exhibit indicate that the Loan Modification (RX-2 @ 7 of 16) however bear the heading of Chase Home Finance LLC, a successor by merger to Chase Manhattan Mortgage Corporation. In the Loss Claim Summary (RX-6), the Loss Payee is identified as Chase Home Finance LLC. Although there is a space for the identification of the servicing lender RX-7 does not contain that information. Although there is an obvious similarity in the names of the above parties and a strong likelihood that they are all related identities, there is no evidence that the loss claim was paid to the appropriate holder in due course.

The facts in this action may be considered illustrative of some of the more questionable practices of lenders and others in the financial industries responsible for precipitating the current economic difficulties confronting our country today. Based upon only the information contained in the record, it is difficult to understand why the Agency would pay an entity other than the proper holder of a note under a purported guarantee.

On the basis of the record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

ADMINISTRATIVE WAGE GARNISHMENT ACT

Findings of Fact

1. On March 9, 2005, the Petitioner Brian Yancheson and Danielle Yancheson, a co-borrower received a home mortgage loan from JP Morgan Chase Bank, N.A. in the amount of $173,400.00 for the purchase of property located in Sheridan, Michigan. RX-2.

2. Prior to obtaining the loan, on January 17, 2005 the Yanchesons applied for a loan guarantee from Rural Development, United States Department of Agriculture which guarantee was activated on March 7, 2005 by the loan from JP Morgan Chase Bank, NA. RX-1.

3. In 2008, the Yanchesons were in monetary default on the mortgage loan and a Loan Modification was executed, forestalling any pending foreclosure proceedings. RX-2.

4. In 2009, the Yanchesons again defaulted in the obligations under the original loan as modified, foreclosure proceedings were initiated and the property was sold at foreclosure to Chase. RX-3.

5. Chase subsequently resold the property at a price less than paid at the foreclosure (RX-5).

6. Thereafter, although no assignment of the note and mortgage appears in the record, an entity other than JPMorgan Chase Bank, N.A., submitted a loss claim under the Loan Guarantee to USDA and was paid the sum of $124,001.88. RX-6-7.

7. USDA referred this alleged debt of $124,001.88 to Treasury and $4,356.00 was collected from the Petitioner. RX-10.

Conclusions of Law

8. The Secretary has jurisdiction in this matter.

9. The Agency has failed in its burden of proof of establishing a debt in this matter.

10. USDA paid an entity under the guarantee agreement that has not been established as the then holder of the note entitled to make such a loss claim.

11. Any amount collected from the Petitioner arising out of the purported guarantee was improper and should be refunded to him.

ORDER

For the foregoing reasons, no debt being established, the wages of the Petitioner may **NOT** be subjected to administrative wage garnishment. Any amounts collected from the Petitioner subsequent to foreclosure **SHALL** be refunded.

Copies of this Decision and order shall be served upon the parties by the Hearing Clerk's Office.

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In re: KEITH PARMELEY.
Docket No. 12-0329.
Decision and Order.
Filed June 28, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

1. The hearing by telephone was held as scheduled on June 13, 2012. Keith Parmeley, also known as Keith W. Parmeley ("Petitioner Parmeley") did not participate. (Petitioner Parmeley did not participate by telephone: there was no answer at the telephone number Petitioner Parmeley provided in his Hearing Request; and in response to my Order issued April 25, 2012, Petitioner Parmeley provided no telephone number where he could be reached for the hearing by telephone.)

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. Petitioner Parmeley owes to USDA Rural Development a balance of **$75,715.**42 (as of May 2, 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 on July 10, 2006, by JP Morgan Chase Bank, N.A., for a home in Missouri, the balance of which is now unsecured ("the debt"). *See* USDA Rural Development Exhibits RX 1 through RX 10, plus Narrative, Witness & Exhibit List (filed May 3, 2012), which are admitted into evidence, together with the testimony of Michelle Tanner.

4. This ***Guarantee*** establishes an **independent** obligation of Petitioner Parmeley, "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.

5. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **$75,715.42** would increase the current balance by $21,200.32, to $96,915.74. *See* USDA Rural Development Exhibits, esp. RX 10, p. 2.

6. The amount Petitioner Parmeley borrowed was $153,230.00 on July 10, 2006. RX 2. Petitioner Parmeley defaulted on the mortgage to JP Morgan Chase Bank, N.A. ("Chase"). Foreclosure was initiated on July 15, 2010. A foreclosure sale was held on August 11, 2010, at which Chase acquired the property back into inventory with the highest bid, $110,500.00. Chase placed the home "as is" on the market for resale.

The "As Is" Value per the Brokers Price Opinion (BPO) was $114,900.00 as of September 3, 2010. The Original List Price was $124,500.00. The Final List Price was $106,900.00. The property sold to a third party for $99,000.00, with the closing date being March 25, 2011.

7. Mr. Parmeley stated in his Hearing Request: "My home was only 3 yrs. old. Chase Bank owes." But Mr. Parmeley owed $168,124.66 on the loan with Chase. The detail is shown on RX 7. In addition to principal ($148,417.49), there was interest ($17,107.90), and there were fees and protective advances to pay taxes and insurance ($2,2583.13). There was also interest on protective advances ($16.14). These four items of what Mr. Parmeley owed total $168,124.66. RX 7. Petitioner Parmeley also owed Chase's expenses to sell the property, which totaled an additional $12,985.74. The detail is shown on RX 7. So, after the $99,000.00 in sales proceeds were applied to reduce the debt, and another $5,887.98 in recoveries/credits/reductions were applied to reduce the debt, Chase still had a loss claim of $76,222.42. RX 6, RX 7, and USDA Rural Development Narrative.

8. USDA Rural Development paid the loss claim to Chase, $76,222.42, in May 2011. RX 9 and USDA Rural Development Narrative. Thus $76,222.42, the amount USDA Rural Development paid, is the amount USDA Rural Development recovers from Petitioner Parmeley under the ***Guarantee***. No more interest accrues; no interest, no penalties.

9. A collection by Treasury ($524.00 from Petitioner Parmeley in February 2012, an ***offset***) applied to reduce the debt (after the collection fee was subtracted) leaves **$75,715.42** unpaid as of May 2, 2012 (excluding the potential remaining collection fees). *See* RX10.

10. Although my Hearing Notice and Prehearing Deadlines, dated April 25, 2012, invited financial disclosure from Petitioner Parmeley, such as filing a Consumer Debtor Financial Statement, he filed nothing. Thus I cannot calculate Petitioner Parmeley's current disposable pay. (Disposable pay 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.) There is no evidence before me to use to consider the factors to be considered

under 31 C.F.R. § 285.11. In other words, I cannot tell whether garnishment to repay "the debt" (*see* paragraph 3) in the amount of 15% of Petitioner Parmeley's disposable pay creates a financial hardship.

11. Petitioner Parmeley is responsible and able to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

12. Garnishment of Petitioner Parmeley's disposable pay is authorized. I encourage **Petitioner Parmeley and Treasury's collection agency** to negotiate **promptly** the repayment of the debt. Petitioner Parmeley, this will require **you** to telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Parmeley, 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 Parmeley, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

14. Petitioner Parmeley owes the debt described in paragraphs 3 through 9.

15. **Garnishment up to 15% of Petitioner Parmeley's disposable pay** is authorized. There is no evidence that financial hardship will be created by the garnishment. 31 C.F.R. § 285.11.

16. **No refund** to Petitioner Parmeley of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.

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

ORDER

18. Until the debt is repaid, Petitioner Parmeley 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).

19. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with **garnishment up to 15% of Petitioner Parmeley's disposable pay**. 31 C.F.R. § 285.11.

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

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

In re: ALDEN G. YOUNG.
Docket No. 12-0336.
Decision and Order.
Filed June 28, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Peter M. Davenport, chief Administrative Law Judge.

DECISION AND ORDER

This matter is before the Administrative Law Judge upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On April 20, 2012, a Prehearing Order was entered to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of

information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing on June 28, 2012.

The Respondent complied with that Order and a Narrative was filed, together with supporting documentation on May 16, 2012. The only material filed by the Petitioner was attached to his Request for Hearing. That material indicates that the Petition believes that he should not be responsible for the debt as his ex wife was awarded the secured property in their divorce. The extract from the divorce decree and the separation agreement entered into between the parties does support the fact that the ex wife did receive the property and that she was ordered to hold the Petitioner harmless from further liability.

While the divorce proceedings bound only the parties to that action and would not have affected the right of Rural Development to proceed against a borrower who was not released from liability, examination of the record reflects that in this case Rural Development subsequently reamortized the indebtedness without the participation of the Petitioner and thus is precluded from further attempts to collect the debt from him.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On December 2, 1994, the Petitioner and his then wife, assumed loans to Wendall and Andrea Brann in the amount of $68,362.99 from Farmers Home Administration (FmHA), United States Department of Agriculture (USDA), now Rural Development (RD) for property located in Jefferson, Maine. On the same date, the Youngs also obtained an addition loan in the amount of $17, 070.00. All of the prior loans were secured by a mortgage on the said property. RX-1.

2. On May 13, 1998, a Divorce Decree was entered in District Six, Division of Knox, State of Maine District Court dissolving the marriage between the Petitioner and Tracy Young (later Nash and Finley). As part of the Decree, the ex wife was awarded the residence subject to the above indebtedness and was directed to hold the Petitioner harmless from further liability on the property. Subsequent contempt proceedings in the same

Court reflect that the ex wife was directed to make reasonable efforts to get Petitioner's name removed from the mortgage on the residence. Attachment to Request for Hearing.

3. In January of 2007, Rural Development, without the participation of the Petitioner, reamortized the loans in the name of the ex wife only. RX-1.

4. Later that year, the loan was accelerated due to monetary default and the property was sold at a foreclosure sale on October 28, 2008 with proceeds realized from that sale in the amount of $89,270.00 leaving a balance due of $23,605.31. Foreclosure expenses of $3,210.00 were added to the amount due making the total amount allegedly due $26,815.31. RX-7.

5. Payments totaling $573.00 exclusive of Treasury fees have been received. RX-8.

6. The remaining unpaid debt is in the amount of $26,276.31 exclusive of potential Treasury fees. RX-8.

Conclusions of Law

7. The 2007 reamortization of the loans without the participation of the Petitioner in the name of the ex wife released the Petitioner from further liability to Rural Development.

8. Petitioner is no longer indebted to USDA Rural Development.

9. There being no indebtedness owed by the Petitioner, the Respondent is NOT entitled to administratively garnish his wages.

ORDER

1. For the foregoing reasons, the wages of Petitioner may NOT be subjected to administrative wage garnishment and Rural Housing is **ORDERED** to recall the debt from Treasury as it pertains to the Petitioner.

2. Pursuant to the Finding that no debt is owed, Rural Development may not issue a 1099 reflecting forgiveness of the alleged indebtedness.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

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In re: DUSTIN POWLUS.
Docket No. 12-0344.
Decision and Order.
Filed June 28, 2012.

AWG.

Petitioner, pro se.
Michelle Tanner for RD.
Decision and Order by Peter M. Davenport, Chief Administrative Law Judge.

DECISION AND ORDER

This matter is before the Administrative Law Judge upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On April 20, 2012, a Prehearing Order was entered to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing on June 28, 2012.

The Respondent complied with that Order and a Narrative was filed, together with supporting documentation on May 14, 2012. The only material appearing in the record from the Petitioner are the attachments to his Request for Hearing. On the June 28, 2012 at the time set for the hearing, efforts to reach the Petitioner were unsuccessful and he will be deemed to have waived her right to a hearing.

In his Request for Hearing, the Petitioner asserted that he never had a loan with the "Federal gov." While technically correct, Petitioner's position fails to address the issue of whether he ever applied for the loan guarantee with Rural Development which is the basis for the collection action.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On February 15, 2007, Dustin Powlus applied for and received a home mortgage loan guarantee from Rural Development (RD) (RX-1) and on March 16, 2007 obtained a home mortgage loan for property located in Berwick, Pennsylvania from Columbia County Farmers National Bank for $86,900.00. RX-2.

2. On March 17, 2007 Columbia County Farmers National Bank assigned the note and mortgage to the Pennsylvania Housing Finance Agency by assignment of record as Instrument 2007-02814 in the County records. The note and mortgage were later reassigned to U.S. Bank, National Association, Trustee for Pennsylvania Housing Finance Agency. RX-3.

3. In 2010, the Petitioner defaulted on the mortgage loan and foreclosure proceedings were initiated. RX-3.

4. The note holder submitted a loss claim and USDA paid the note holder the sum of $40,456.75 for unpaid principal, accrued interest, protective advances, liquidation costs and property sale costs. RX-6, 7.

5. The unpaid debt is in the amount of $40,456.75, exclusive of potential Treasury fees.

Conclusions of Law

6. Petitioner is indebted to USDA Rural Development in the amount of $40,456.75 for the mortgage loan guarantee extended to him.

7. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.

8. The Respondent is entitled to administratively garnish the wages of the Petitioner.

ORDER

For the foregoing reasons, the wages of the Dustin Powlus, shall be subjected to administrative wage garnishment at the rate of 15% of disposable pay, or such lesser amount as might be specified in 31 C.F.R. § 285.11(i).

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

ANIMAL WELFARE ACT

DEPARTMENTAL DECISIONS

IN RE: KATHY JO BAUCK (a/k/a "KATHY COLE" a/k/a "K.J. COLE"), ALLAN R. BAUCK a/k/a "A.R. BACK" a/k/a "A.R. BAUK"), CORINNE A. PETERS, JANET JESUIT, AND PEGGY WEISE, INDIVIDUALS, d/b/a PUPPY'S ON WHEELS, a/k/a "PUPPIES ON WHEELS" AND "PICK OF THE LITTER," ALSO d/b/a "PINE LAKE ENTERPRISES," "KJ'S PETS," "NEW YORK KENNEL CLUB," AND "NEW YORK KENNEL CLUB, INC.," AND "PINE LAKE ENTERPRISES, INC., A MINNESOTA DOMESTIC CORPORATION.
Docket No. 11-0088.
Decision and Order.
Filed February 9, 2012.

AWA.

Babak A. Rastgoufard, Esq. for APHIS.
Tami L. Norgard, Esq. for Petitioner.
Initial Decision by Janice K. Bullard, Administrative Law Judge.
Decision and Order by William R. Jenson, Judicial Officer.

Decision and Order as to Peggy Weise

PROCEDURAL HISTORY

On December 8, 2010, Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this disciplinary administrative proceeding by filing a Complaint. The Administrator instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; the regulations and standards issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142); and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151) [hereinafter the Rules of Practice]. The December 8, 2010, Complaint did not include Ms. Weise as a respondent, but, on

June 15, 2011, the Administrator amended the Complaint adding Ms. Weise as a respondent (First Amended Complaint). On July 18, 2011, Ms. Weise filed a response to the First Amended Complaint in which she denied the material allegations of the First Amended Complaint.

On September 14, 2011, the Administrator entered into consent decisions with all respondents except Ms. Weise. On September 23, 2011, the Administrator filed a Status Report stating: (1) "the . . . proceeding has concluded, except as otherwise provided in [the September 14, 2011, Consent Decisions]" and (2) "no further activity in the . . . proceeding is anticipated and thus, except as otherwise provided in [the September 14, 2011, Consent Decisions], this proceeding is believed to be concluded." (Status Report at 1-2.)

On September 27, 2011, Administrative Law Judge Janice K. Bullard [hereinafter the ALJ] dismissed with prejudice the First Amended Complaint as it relates to Ms. Weise (Order Dismissing Respondent Peggy Weise at 3). On October 20, 2011, the Administrator filed APHIS's Motion for Reconsideration [hereinafter Motion to Reconsider] requesting that the ALJ rescind the September 27, 2011, Order Dismissing Respondent Peggy Weise and cancel the scheduled hearing (Mot. to Reconsider at 3). On November 8, 2011, Ms. Weise filed a response opposing the Administrator's Motion to Reconsider. On December 14, 2011, the ALJ denied the Administrator's Motion to Reconsider (Order Denying Reconsideration of Order Dismissing Respondent Peggy Weise with Prejudice).

On January 11, 2012, the Administrator filed APHIS's Appeal Petition and Brief in Support Thereof [hereinafter Appeal Petition]. On February 6, 2012, Ms. Weise filed a response opposing the Administrator's Appeal Petition. On February 8, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration of the Administrator's Appeal Petition and a decision.

DECISION

The Administrator contends the ALJ erred by dismissing with prejudice the First Amended Complaint. The Administrator asserts the

September 23, 2011, Status Report and the October 20, 2011, Motion to Reconsider are motions to withdraw the First Amended Complaint, which the ALJ erroneously failed to grant:

> Although the status report did not explicitly refer to "withdrawing" the complaint against Weise, complainant made clear in the motion for reconsideration, which was filed at the ALJ's express request, that withdrawal of the complaint was the type of action being sought. Alternatively, instead of dismissing Weise without prejudice, the order should be modified simply to withdraw the complaint against respondent Weise.

Appeal Pet. at 8 n.5. The right of a party instituting a proceeding under the Rules of Practice to voluntarily withdraw a complaint and reinstitute the proceeding should be preserved, except under rare circumstances.[1] However, neither the Administrator's Status Report nor the Administrator's Motion to Reconsider is a motion to withdraw the First Amended Complaint. The Administrator's September 23, 2011, Status Report is not a motion; it is merely the Administrator's report to the ALJ that "no further activity in the . . . proceeding is anticipated" and that "this proceeding is believed to be concluded." The Administrator's Motion to Reconsider is a motion; however, the Motion to Reconsider contains only a single reference to withdrawing the First Amended Complaint, as follows:

> [C]omplainant respectfully requests that the [O]rder [Dismissing Respondent Peggy Weise] be rescinded and that the hearing be cancelled. In in [sic] the event it is deemed necessary, complainant does not object to withdrawing the first amended complaint as to respondent Peggy Weise, or, alternatively, to issuance of an order so doing.

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[1] *In re Sierra Kiwi, Inc.* (Rulings), 58 Agric. Dec. 330, 332-34 (1999); *In re Fresh Prep, Inc.* (Ruling on Certified Question), 58 Agric. Dec. 683, 687-90 (1999).

Mot. to Reconsider at 3. I do not find that the Administrator's Motion to Reconsider is a motion to withdraw the First Amended Complaint. Instead, the Motion to Reconsider requests that the ALJ rescind the September 27, 2011, Order Dismissing Respondent Peggy Weise and cancel the scheduled hearing. While the Administrator asserts he would not object to withdrawal of the First Amended Complaint as an alternative disposition of the proceeding, the Administrator makes clear that withdrawal is to be effectuated only if the ALJ finds such a disposition necessary. Apparently, the ALJ did not find such a disposition necessary.

For the foregoing reasons, the following Order is issued.

ORDER

1. The Administrator's January 11, 2012, Appeal Petition is dismissed.

2. The ALJ's September 27, 2011, Order Dismissing Respondent Peggy Weise and the ALJ's December 14, 2011, Order Denying Reconsideration of Order Dismissing Respondent Peggy Weise with Prejudice are affirmed.

In re: FOR THE BIRDS, INC.; JERRY LEROY KORN, MICHAEL SCOTT KORN, AND RAYMOND WILLIS.
DECISION AND ORDER AS TO ONLY FOR THE BIRDS, INC., JERRY LEROY KORN, AND MICHAEL SCOTT KORN.
Docket No. 09-0196.
Decision and Order.
Filed March 16, 2012.

AWA.

Colleen Carroll, Esq. for APHIS.
Respondents, pro se.
Decision and Order by Administrative Law Judge Jill S. Clifton.

DECISION AND ORDER

Procedural History

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq*.) (the "Act") by a Complaint filed September 14, 2009, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondents willfully violated the regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 *et seq*.). This Decision and Order is entered pursuant to section 1.141(e) of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.141(e)).

The Administrator of the Animal and Plant Health Inspection Service ("APHIS" or "Complainant") initiated this case in furtherance of USDA's statutory mandate under the Act to ensure that animals transported, sold or used for exhibition are treated humanely and carefully.[1] APHIS is represented by Colleen Carroll, Office of the General Counsel, United States Department of Agriculture. APHIS seeks penalties against respondents for violating the Act and the regulations and standards promulgated thereunder, 9 C.F.R. § 2.1 *et seq*. (the "Regulations" and "Standards"). For the Birds, Inc. is represented by Jerry LeRoy Korn; and Jerry LeRoy Korn and Michael Scott Korn represent themselves (appear *pro se*); all three filed answers denying the material allegations of the Complaint.[2]

The hearing was held in Washington D.C. on March 13, 2012, with telephone connection available to respondents. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed, without good cause, to appear at the hearing. Complainant moved for issuance of

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[1] The Animal Welfare Act, 7 U.S.C. § 2131 et seq. (the "Act"), was originally passed by Congress specifically to address the public's interest in preventing the theft of pets and in ensuring that animals used in research were treated humanely. The Act was amended to regulate the transportation, purchase, sale, housing, care, handling and treatment of animals used for exhibition purposes or as pets.

[2] There were seven respondents. On February 17, 2012, I issued a Consent Decision and Order as to Respondents John Breidenbach and Dawn Talbott. On March 9, 2012, I issued a Consent Decision and Order as to Respondent Patrick Ben Korn. Four respondents remain.

a decision pursuant to section 1.141(e) of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.141(e)), and I granted Complainant's motion. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn, by failing to appear for the hearing, are deemed to have admitted the allegations in the Complaint, waived the right to an oral hearing, and to have admitted any facts presented at the hearing. Section 1.141(e) of the Rules of Practice (7 C.F.R. § 1.141(e)).

My Prehearing Deadlines and Instructions issued in July 2011 had been ignored by Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn. That order included:

> Each Respondent and counsel for APHIS **shall file with the Hearing Clerk on or before August 31 (Wednesday) 2011**, any corrections and additions to paragraphs 1 and 2, and his or her current contact information for use in this case, to be used by not only the Hearing Clerk and me, but also, by the other parties. The current contact information shall include: (1) mailing address; (2) delivery address for commercial carriers such as FedEx or UPS; (3) e-mail address(es); (4) phone number(s); and (5) FAX number(s).

That order also required the respondents and counsel for APHIS to "**promptly file with the Hearing Clerk any *changes* in contact** information while this case is pending . . . ." In addition, paragraphs 8 and 11 of my order state:

> 8. By **Wednesday, February 22, 2012**, each of the Respondents will deposit for next business day delivery to counsel for APHIS, by a commercial carrier such as FedEx or UPS, copies of proposed exhibits, list of proposed exhibits, and a list of anticipated witnesses. [These may be submitted jointly (by more than one Respondent), if the submission clearly identifies the Respondents who are submitting the documents.] . . .
>
> . . . .11. IF Respondents fail to comply with this Order, I expect to change the hearing location to Washington, D.C. [Respondents who fail to participate in prehearing requirements are likely to fail to appear at the hearing, and I do not want to travel to Boise, Idaho if no Respondents will appear.]

In July 2011 I also issued a Hearing Notice setting the hearing for March 13 through 16, 2012, in Boise, Idaho. However, in part because, in a previous case, Respondents For the Birds, Inc. (through its then-representative Raymond Willis), Jerry LeRoy Korn and Michael Scott Korn all failed to appear, without good cause, at the scheduled hearing, I included the following proviso in Paragraph 2 in my Hearing Notice:

> 2. IF Respondents fail to comply with my order "Prehearing Deadlines and Instructions" issued the same date as this Hearing Notice, I expect to change the hearing location to Washington, D.C. [Respondents who fail to participate in prehearing requirements are likely to fail to appear at the hearing, and I do not want to travel to Boise, Idaho if no Respondents will appear.]

On March 2, 2012, the Complainant filed a motion advising that respondents For the Birds, Inc., Jerry LeRoy Korn, Michael Scott Korn and Raymond Willis had not complied with my prehearing order. Specifically, Complainant averred that none of these respondents had provided an exhibit list, a witness list, or copies of exhibits. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn have not communicated with me, with the Complainant, or with the Hearing Clerk since 2009.

Complainant's motion requested that the hearing be held in Washington, D.C. On March 7, 2012, I granted Complainant's motion. The Hearing Clerk served copies of the Complainant's motion, and the signed order, on Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn.

The Complaint alleges (in paragraphs 12, 19, 23, 27, 31, and 35) that during a four-year period[3] totaling 2,819 days,[4] Respondents For the

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[3] September 15, 2004, through September 14, 2009, excepting six specific dates within that time frame.

[4] The period between September 15, 2004, and June 23, 2005, comprises 276 days. The period between June 23, 2005 and June 17, 2008 comprises 1089 days. The period

Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn exhibited animals without a license, violated three provisions of the veterinary care Regulations, and violated two of the handling Regulations.[5] Paragraphs 17, 18, and 39 of the Complaint allege a total of nine additional separate violations.[6]

The maximum civil penalty for each violation occurring between September 15, 2004, and June 23, 2005, was $2,750.[7] The maximum civil penalty for each violation occurring between June 23, 2005, through June 17, 2008, was $3,750.[8] Since June 18, 2008, the maximum civil penalty for a violation has been $10,000.[9]

Complainant elected to present evidence, in part, in the form of affidavits and oral testimony. Complainant introduced the testimony of eleven witnesses[10] and moved the admission of thirty-eight exhibits, which I admitted in evidence. I issue this initial Decision and Order on March 16, 2012.

Findings of Fact

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between June 17, 2008, and September 14, 2009 (the filing of the Complaint) comprises 454 days.

[5] 7 U.S.C. § 2149(b) ("Each violation and each day during which a violation occurs shall be a separate offense.").

[6] Complainant has deleted references to a violation by respondents on September 25, 2003, as barred by the applicable statute of limitations. The maximum assessable civil penalty for the nine violations in paragraphs 17, 18, and 39 is $30,750.

[7] 28 U.S.C. § 2461; 62 Fed. Reg. 40924 (July 31, 1997); 62 Fed. Reg. 42857 (Aug. 8, 1997); 7 C.F.R. § 3.91(b)(2)(ii)("Civil penalty for a violation of Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of $2,750; and knowing failure to obey a cease and desist order has a civil penalty of $1,650.").

[8] 28 U.S.C. § 2461; 70 Fed. Reg. 29575 (May 24, 2005)(final rule effective June 23, 2005); 7 C.F.R. § 3.91(b)(2)(ii) ("Civil penalty for a violation of Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of $3,750; and knowing failure to obey a cease and desist order has a civil penalty of $1,650.").

[9] U.S.C. § 2149(b).

[10] The following witnesses testified by telephone: Frank Lolli, Keith Schuller, Susan Dahnke, Craig Perry, Dr. Jeff Rosenthal, Joelene Janicek Gould (whose testimony was cut short by a fire alarm in the South Building), Kelly Kitchens, John Breidenbach, Dawn Talbott, and Captain Toby Hauntz. Retired USDA Investigator Kirk B. Miller testified in person.

1. Respondent For the Birds, Inc., is an Idaho corporation (currently administratively dissolved) whose agent for service of process is Jerry L. Korn, 6999 Little Willow Road, Payette, Idaho 83661.[11] At all times mentioned herein, Respondent For the Birds, Inc., was an exhibitor as that term is defined in the Act and the Regulations.

2. Respondent Jerry LeRoy Korn, also known as Jerry L. Korn, is an individual whose mailing address is 6999 Little Willow Road, Payette, Idaho 83661. At all times mentioned herein, said Respondent was an exhibitor as that term is defined in the Act and the Regulations. Between 2001 and May 23, 2003, said Respondent held Animal Welfare Act license number 82-C-0035, issued to "JERRY L. AND SUSAN F. KORN DBA FOR THE BIRDS," which license was cancelled on May 23, 2003.[12] That license was revoked by an order of the Secretary of Agriculture issued on June 22, 2005.[13]

3. Respondent Michael Scott Korn is an individual whose mailing address is 6999 Little Willow Road, Payette, Idaho 83661. At all times mentioned herein, Respondent Michael Scott Korn was (1) operating as an exhibitor, as that term is defined in the Act and the Regulations, and/or (2) acting for or employed by an exhibitor (Respondent For the Birds, Inc., and/or Respondent Jerry LeRoy Korn), and his acts, omissions or failures within the scope of his employment or office are, pursuant to section 2139 of the Act (7 U.S.C. § 2139), deemed to be his own acts, omissions, or failures, as well as the acts, omissions, or failures of Respondent For the Birds, Inc., and/or Respondent Jerry LeRoy Korn.

4. Respondents For the Birds, Inc., and Jerry LeRoy Korn and Michael Scott Korn operate a moderate-sized business exhibiting farm, wild and exotic animals. The gravity of the violations alleged in the Complaint is great, and include repeated instances in which these Respondents knowingly exhibited animals without having a valid license, failed to provide animals with adequate veterinary care, and failed to handle animals humanely. The testimony and exhibits introduced at the hearing establish by more than a preponderance of the evidence that Respondents

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[11] CX 3, CX 3a.
[12] CX 1.
[13] In re For the Birds, Inc., et al., 64 Agric. Dec. 306 (2005).

For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn operated as exhibitors and dealers, without being licensed to do so, as alleged in the Complaint. The evidence introduced also established that these Respondents handled animals in a manner that exposed people and animals to harm, and that they failed, on multiple occasions, to provide minimally-adequate care to the animals in their custody, and specifically failed to provide them with necessary veterinary care.

5. Respondent Michael Scott Korn is a son of Respondent Jerry LeRoy Korn. The evidence introduced by Complainant establishes that Respondent Michael Scott Korn committed the violations herein;[14] however, it appears that Respondent Michael Scott Korn has to some extent been subject to the influence, direction and instruction of his father, Respondent Jerry LeRoy Korn, to the detriment of Respondent Michael Scott Korn.

6. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn have continually failed to comply with the Regulations, after having been repeatedly advised of deficiencies. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn have not shown good faith. To the contrary, Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn have repeatedly and knowingly demonstrated an unwillingness to comply with the Act's and the Regulations' prohibition against exhibiting animals without having a valid license and requirements for exhibiting animals safely.

7. Respondents For the Birds, Inc., and Jerry LeRoy Korn have an extensive history of previous violations. Specifically, this is the third administrative enforcement action instituted by the Secretary of Agriculture against Respondents For the Birds, Inc., and Jerry LeRoy Korn. *See In re For the Birds, Inc., et al.,* 64 Agric. Dec. 306 (2005), WL 1524662 (Decision and Order as to For the Birds, Inc., and Jerry L. Korn);and *In re For the Birds, Inc., et al.*, 67 Agric. Dec. 191, 2008 WL 4675786 (2008).[15] This is the second administrative enforcement proceeding against Respondent Michael Scott Korn.

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[14] CX 7, CX 15; Testimony of Kirk Miller.
[15] CX 2a, CX 2c.

8. Respondent For the Birds, Inc., was assessed a $28,050 civil penalty in 2005, for its 1,545 violations; and was assessed a $57,750 civil penalty in 2008 for its 21 violations.[16] Respondent For the Birds, Inc., has not remitted any portion of these assessments.

9. Respondent Jerry LeRoy Korn was assessed a $20,597 civil penalty in 2005, for his 749 violations; and was assessed a $57,750 civil penalty in 2008 for his 21 violations.[17] Respondent Jerry LeRoy Korn has not remitted any portion of these assessments.

10. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn were also ordered, in previous cases, to cease and desist from violating the Act and the Regulations and Standards. Each of the violations by Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn constitutes a knowing failure to obey a cease and desist order issued by the Secretary of Agriculture, which subjects Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn to assessment of a civil penalty of $1,650 for each such offense, pursuant to section 2149(b) of the Act. 7 C.F.R. § 2149(b).

11. From September 15, 2004, to the date of the filing of this Complaint (excepting November 13 and 26, and December 4, 11 and 18, 2004, and January 12, 2005), Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn operated as exhibitors, without having been licensed by the Secretary to do so, and specifically, operated a zoo.[18]

12. On September 23, 2004, Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn operated as dealers, without having been licensed by the Secretary to do so, and specifically, bought or negotiated the purchase of a vervet for use in exhibition.[19]

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[16] CX 2a, CX 2c, CX 2d, CX 2e.
[17] CX 2a, CX 2c, CX 2d, CX 2e.
[18] CX 5, CX 7, CX 14, CX 15, CX 16, CX 17, CX 18, CX 20, CX 21, CX 22, CX 24, CX 25, CX 26, CX 27, CX 28, CX 29, CX 29a, CX 30, CX 31, CX 32, CX 33; Testimony of: John Breidenbach, Dawn Talbott, Susan Dahnke, Keith Schuller, Kelly Kitchens, Captain Toby Hauntz, Kirk Miller.
[19] CX 6; Testimony of Kirk B. Miller; Testimony of Frank Lolli.

13. On or about November 1, 2004, Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn operated as dealers, without having been licensed by the Secretary to do so, and specifically, delivered for transportation or transported two tigers for use in exhibition.[20]

14. From September 15, 2004, to the date of the filing of this Complaint (excepting November 13 and 26, and December 4, 11 and 18, 2004, and January 12, 2005), Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to have an attending veterinarian who provided adequate veterinary care to Respondents' animals.[21]

15. From September 15, 2004, to the date of the filing of this Complaint (excepting November 13 and 26, and December 4, 11 and 18, 2004, and January 12, 2005), Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to employ an attending veterinarian under formal arrangements, and with appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use.[22]

16. From September 15, 2004, to the date of the filing of this Complaint (excepting November 13 and 26, and December 4, 11 and 18, 2004, and January 12, 2005), Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to establish and maintain programs of adequate veterinary care.[23]

17. From September 15, 2004, to the date of the filing of this Complaint (excepting November 13 and 26, and December 4, 11 and 18, 2004, and January 12, 2005), Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to handle animals as expeditiously and carefully as possible in a manner that would not cause them trauma, unnecessary discomfort, behavioral stress, or physical harm.[24]

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[20] CX 8, CX 9, CX 10; Testimony of Kirk B. Miller; Testimony of Craig Perry.
[21] CX 7, CX 8, CX 11, CX 12; CX 13, CX 19; Testimony of Kirk Miller.
[22] CX 7, CX 11, CX 12; Testimony of Kirk Miller.
[23] CX 7, CX 8, CX 11, CX 12, CX 13, CX 34; Testimony of Kirk Miller; Testimony of Dr. Jeff Rosenthal; Testimony of Captain Toby Hauntz.
[24] CX 7, CX 8, CX 10, CX 11, CX 12, CX 13, CX 14, CX 15, CX 16, CX 17, CX 18, CX 19, CX 21, CX 22, CX 24, CX 26, CX 27, CX 28, CX 29, CX29a, CX 30, CX 31, CX 32, CX 33, CX 34; Testimony of John Breidenbach; Testimony of Kirk Miller; Testimony of

18. From September 15, 2004, to the date of the filing of this Complaint (excepting November 13 and 26, and December 4, 11 and 18, 2004, and January 12, 2005), Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, and specifically allowed the public to handle tigers without any barrier or distance.[25]

19. On July 23, 2006, Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to meet the minimum facilities and operating standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals (9 C.F.R. §§ 3.125-3.142), as follows:

a. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to ensure that housing facilities were structurally sound and maintained in good repair.[26]

b. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to maintain their perimeter fence structurally sound and in good repair, and specifically, there was no perimeter fence around Respondents' facility.[27]

c. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to provide tigers with adequate shelter from inclement weather.[28]

Susan Dahnke; Testimony of Captain Toby Hauntz; Testimony of Joelene Janicek Gould; Testimony of Dr. Jeff Rosenthal.

[25] CX 7, CX 14, CX 15, CX 16, CX 21, CX 24, CX 25, CX 26, CX 27, CX 28, CX 29, CX 29a, CX 30, CX 31; Testimony of John Breidenbach; testimony of Kelly Kitchens; Testimony of Captain Toby Hauntz; Testimony of Kirk Miller.

[26] CX 26, CX 27; Testimony of Susan Dahnke; Testimony of Kirk Miller.

[27] CX 26, CX 27; Testimony of Susan Dahnke; Testimony of Kirk Miller.

[28] CX 26, CX 27; Testimony of Susan Dahnke; Testimony of Kirk Miller.

d. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to keep the premises clean and in good repair, and free from excessive weed growth, trash and accumulated debris.[29]

e. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to provide animals (tigers and bears) with clean, potable water as often as necessary for their health and well-being.[30]

f. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to provide tigers with adequate shelter from sunlight.[31]

Conclusions

1. From September 15, 2004, to the date of the filing of this Complaint (excepting November 13 and 26, and December 4, 11 and 18, 2004, and January 12, 2005), Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn operated as exhibitors, without having been licensed by the Secretary to do so, and specifically, operated a zoo, in willful violation of sections 2.1(a) and 2.100(a) of the Regulations. 9 C.F.R. §§ 2.1(a), 2.100(a).

2. On September 23, 2004, Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn operated as dealers, without having been licensed by the Secretary to do so, and specifically, bought or negotiated the purchase of a vervet for use in exhibition, in willful violation of sections 2.1(a) and 2.100(a) of the Regulations. 9 C.F.R. §§ 2.1(a), 2.100(a).

3. On or about November 1, 2004, Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn operated as dealers, without having been licensed by the Secretary to do so, and specifically, delivered for transportation or transported two tigers for use in exhibition, in willful

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[29] CX 26, CX 27; Testimony of Susan Dahnke; Testimony of Kirk Miller.
[30] CX 26, CX 27; Testimony of Susan Dahnke; Testimony of Kirk Miller.
[31] CX 26, CX 27; Testimony of Susan Dahnke; Testimony of Kirk Miller.

violation of sections 2.1(a) and 2.100(a) of the Regulations. 9 C.F.R. §§ 2.1(a), 2.100(a).

4. From September 15, 2004, to the date of the filing of this Complaint (excepting November 13 and 26, and December 4, 11 and 18, 2004, and January 12, 2005), Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to have an attending veterinarian who provided adequate veterinary care to Respondents' animals, in willful violation of section 2.40(a)of the veterinary care regulations. 9 C.F.R. § 2.40(a).

5. From September 15, 2004, to the date of the filing of this Complaint (excepting November 13 and 26, and December 4, 11 and 18, 2004, and January 12, 2005), Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to employ an attending veterinarian under formal arrangements, and with appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use, in willful violation of section 2.40(a)(1)-(2) of the veterinary care regulations. 9 C.F.R. § 2.40(a)(1)-(2).

6. From September 15, 2004, to the date of the filing of this Complaint (excepting November 13 and 26, and December 4, 11 and 18, 2004, and January 12, 2005), Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to establish and maintain programs of adequate veterinary care, in willful violation of section 2.40(b) of the veterinary care regulations. 9 C.F.R. § 2.40(b).

7. From September 15, 2004, to the date of the filing of this Complaint (excepting November 13 and 26, and December 4, 11 and 18, 2004, and January 12, 2005), Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to handle animals as expeditiously and carefully as possible in a manner that would not cause them trauma, unnecessary discomfort, behavioral stress, or physical harm, in willful violation of the handling regulations. 9 C.F.R. § 2.131(b)(1).

8. From September 15, 2004, to the date of the filing of this Complaint (excepting November 13 and 26, and December 4, 11 and 18, 2004, and January 12, 2005), Respondents For the Birds, Inc., Jerry LeRoy Korn and

Michael Scott Korn failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, in willful violation of the handling regulations, and specifically allowed the public to handle tigers without any barrier or distance. 9 C.F.R.§ 2.131(c)(1).

9. On July 23, 2006, Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn willfully violated section 2.100(a) of the Regulations by failing to meet the minimum facilities and operating standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals (9 C.F.R. §§ 3.125-3.142), as follows:

a. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to ensure that housing facilities were structurally sound and maintained in good repair. 9 C.F.R. § 3.125(a).

b. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to maintain their perimeter fence structurally sound and in good repair, and specifically, there was no perimeter fence around Respondents' facility. 9 C.F.R. § 3.127(d).

c. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to provide tigers with adequate shelter from inclement weather. 9 C.F.R. § 3.127(b).

d. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to keep the premises clean and in good repair, and free from excessive weed growth, trash and accumulated debris. 9 C.F.R. § 3.131(c).

e. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to provide animals (tigers and bears) with clean, potable water as often as necessary (at a minimum) for their health and well-being. 9 C.F.R. § 3.130.

f. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to provide tigers with adequate shelter from sunlight. 9 C.F.R. § 3.128.

ORDER

1. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn, their agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations and Standards issued thereunder. The provisions of this paragraph shall become effective immediately.

2. Respondent For the Birds, Inc., is assessed a civil penalty of $90,750, for its (at a minimum) 15 violations herein, and is assessed a further civil penalty of $24,750 for its (at a minimum) 15 knowing failures to comply with a cease-and-desist order of the Secretary of Agriculture.

3. Respondent Jerry LeRoy Korn is assessed a civil penalty of $90,750, for his (at a minimum) 15 violations herein, and is assessed a further civil penalty of $24,750 for his (at a minimum) 15 knowing failures to comply with a cease-and-desist order of the Secretary of Agriculture.

4. Respondent Michael Scott Korn is assessed a civil penalty of $10,000, for his (at a minimum) 15 violations herein, and is assessed a further civil penalty of $24,750 for his (at a minimum) 15 knowing failures to comply with a cease-and-desist order of the Secretary of Agriculture.

5. The civil penalties in paragraphs 2, 3 and 4 above are to be paid, within 60 days of the date of this Decision and Order, by certified check or money order made payable to order of **Treasurer of the United States**, marked with **AWA 09-0196**, and remitted to:

Colleen A. Carroll
Office of the General Counsel
U.S. Department of Agriculture
1400 Independence Avenue, S.W.

Room 2325B, South Building
Washington, D.C. 20250-1417

This Decision and Order shall be final and effective without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see Appendix A).

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties, **including those whose cases were previously decided by Consent Decisions**.

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In re: FOR THE BIRDS, INC., JERRY LEROY KORN, MICHAEL SCOTT KORN, AND RAYMOND WILLIS.
DECISION AND ORDER AS TO ONLY RAYMOND WILLIS.
Docket No. 09-0196.
Decision and Order.
Filed March 16, 2012.

AWA.

Colleen A. Carroll, Esq., for APHIS.
Respondent, pro se.
Decision and Order by Jill S. Clifton, Administrative law Judge.

DECISION AND ORDER

Procedural History

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq*.) (the "Act") by a Complaint filed September 14, 2009, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondents willfully violated the regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 *et seq*.). This Decision and Order is entered pursuant to section 1.141(e) of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.141(e)).

The Administrator of the Animal and Plant Health Inspection Service ("APHIS" or "Complainant") initiated this case in furtherance of USDA's statutory mandate under the Act to ensure that animals transported, sold or used for exhibition are treated humanely and carefully.[1] APHIS is represented by Colleen Carroll, Office of the General Counsel, United States Department of Agriculture. APHIS seeks penalties against respondents for violating the Act and the regulations and standards promulgated thereunder, 9 C.F.R. § 2.1 *et seq*. (the "Regulations" and "Standards"). Respondent Raymond Willis (Respondent Willis) represents himself (appears *pro se*); he filed an answer denying the material allegations of the Complaint.[2]

The hearing was held in Washington D.C. on March 13, 2012, with telephone connection available to respondents. Respondent Raymond Willis failed, without good cause, to appear at the hearing. Complainant moved for issuance of a decision pursuant to section 1.141(e) of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.141(e)), and I granted Complainant's motion. Respondent Raymond Willis, by failing to appear for the hearing, is deemed to have admitted the allegations in the Complaint, waived the right to an oral hearing, and to have admitted any facts presented at the hearing. Section 1.141(e) of the Rules of Practice (7 C.F.R. § 1.141(e)).

My Prehearing Deadlines and Instructions issued in July 2011 had been ignored by Respondent Raymond Willis. That order included:

> Each Respondent and counsel for APHIS **shall file with the Hearing Clerk on or before August 31**

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[1] The Animal Welfare Act, 7 U.S.C. § 2131 et seq. (the "Act"), was originally passed by Congress specifically to address the public's interest in preventing the theft of pets and in ensuring that animals used in research were treated humanely. The Act was amended to regulate the transportation, purchase, sale, housing, care, handling and treatment of animals used for exhibition purposes or as pets.

[2] There were seven respondents. On February 17, 2012, I issued a Consent Decision and Order as to Respondents John Breidenbach and Dawn Talbott. On March 9, 2012, I issued a Consent Decision and Order as to Respondent Patrick Ben Korn. Four respondents remain.

> **(Wednesday) 2011**, any corrections and additions to paragraphs 1 and 2, and his or her current contact information for use in this case, to be used by not only the Hearing Clerk and me, but also, by the other parties. The current contact information shall include: (1) mailing address; (2) delivery address for commercial carriers such as FedEx or UPS; (3) e-mail address(es); (4) phone number(s); and (5) FAX number(s).

That order also required the respondents and counsel for APHIS to "**promptly file with the Hearing Clerk any *changes* in contact** information while this case is pending . . . ." In addition, paragraphs 8 and 11 of my order state:

> 8. By **Wednesday, February 22, 2012**, each of the Respondents will deposit for next business day delivery to counsel for APHIS, by a commercial carrier such as FedEx or UPS, copies of proposed exhibits, list of proposed exhibits, and a list of anticipated witnesses. [These may be submitted jointly (by more than one Respondent), if the submission clearly identifies the Respondents who are submitting the documents.] . . .
>
> . . . .11. IF Respondents fail to comply with this Order, I expect to change the hearing location to Washington, D.C. [Respondents who fail to participate in prehearing requirements are likely to fail to appear at the hearing, and I do not want to travel to Boise, Idaho if no Respondents will appear.]

In July 2011 I also issued a Hearing Notice setting the hearing for March 13 through 16, 2012, in Boise, Idaho. However, in part because, in a previous case, respondents For the Birds, Inc. (through its then-representative Raymond Willis), Jerry LeRoy Korn and Michael Scott Korn all failed to appear, without good cause, at the scheduled hearing, I included the following proviso in Paragraph 2 in my Hearing Notice:

> 2. IF Respondents fail to comply with my order "Prehearing Deadlines and Instructions" issued the same date as this Hearing Notice, I expect to change the hearing location to Washington,

> D.C. [Respondents who fail to participate in prehearing requirements are likely to fail to appear at the hearing, and I do not want to travel to Boise, Idaho if no Respondents will appear.]

By February 2012, it appeared that Respondent Raymond Willis's location had changed, but Respondent Willis had not filed notice of his changed contact information with the Hearing Clerk, as required. Respondent Willis had not filed notice to establish that "c/o Mr. Young" was Respondent Willis's new contact information or to identify Mr. Young's role. It was not clear whether Mr. Young was authorized to act on behalf of Respondent Willis, as the representative of Respondent Willis. Moreover, from Mr. Young's communications, it appeared that Respondent Willis would not communicate directly with my office, with the Complainant's counsel, or with the Hearing Clerk.[3]

On March 2, 2012, the Complainant filed a motion advising that respondents For the Birds, Inc., Jerry LeRoy Korn, Michael Scott Korn and Raymond Willis had not complied with my prehearing orders. Specifically, Complainant averred that none of these respondents had provided an exhibit list, a witness list, or copies of exhibits. Complainant specifically requested that the hearing location be changed to Washington, D.C., as I had indicated I would do.

On March 7, 2012, I granted Complainant's motion, specifying the hearing location as **WASHINGTON, D.C., in the Office of** Administrative **Law Judge's Hearing Room, 1400 Independence Avenue, S.W., Washington, D.C. 20250**. The Hearing Clerk served copies of the Complainant's motion, and the signed order, on Respondent Raymond Willis. In addition, my office sent copies to Mr. Young.
On March 9, 2012, I filed a Hearing Room Designation, further identifying the specific room location for the hearing and providing instructions for access. The Hearing Clerk served copies of the Designation on Respondent Raymond Willis. In addition, my office sent copies to Mr. Young.

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[3] None of the other extant respondents has communicated with me, with the Complainant, or with the Hearing Clerk since 2009.

On March 9, 2012, Mr. Young sent me a letter stating that Respondent Willis had arrived in Boise, Idaho the previous evening (March 8, 2012), and conveying Respondent Willis's desire that the hearing be held in Boise, Idaho.

On March 10, 2012 (Saturday), Complainant's counsel sent Complainant's response to Mr. Willis's letter to me, to the Hearing Clerk, and to Mr. Young. In Complainant's response, Complainant suggested that if Mr. Willis desired to participate in the hearing by telephone, he should provide his telephone number and contact information to Complainant's counsel.

On March 12, 2012, I filed an order amending the case caption to reflect the resolution of this matter as to respondent Ben Korn. I sent that order by email to Complainant's counsel and to Mr. Young, with the following statement:

> "Ms. Carroll and Mr. Willis, You will note that the Hearing remains scheduled to begin in Washington, D.C. at 10:30 am local time on March 13 (Tues) 2012. Parties and counsel are requested to arrive by 10:00 am. I have carefully considered the FAX from Jeff Young received March 9, 2012; and the Response from APHIS by Ms. Carroll received March 10, 2012. I agree with the Response, except that I will not order that anything be stricken from the record."

Also on March 12, 2012, by facsimile from Mr. Young, I received a three-page letter to Complainant's counsel from Respondent Willis (dated March 11, 2012, Sunday). In that letter, for the first time in this proceeding, Respondent Willis identified his location as West Virginia, specifically stating that he was employed by "***** *****" as a "Special Projects Manager." Respondent Willis's letter generally objected to the manner in which the Complainant has conducted this case, and a previous case, and objected to the manner in which I had determined to hold the hearing. In closing, Respondent Willis stated:

> "It is with regret that I will not be able to challenge your methods and interpretations at the hearing in Boise,

> Idaho, Ms. Carroll. My/our case revolved around law and evidence which I am quite confident you would not have been able to withstand. Sound investigations provide sound evidence which I fully intended to prove out in the hearings. Your 'Perception is Reality' methods would not have withstood the test I had planned for you based on law and proscribed practice."

Respondent Willis did not provide any contact information for himself, and did not, as Complainant suggested, contact Complainant's counsel to arrange to testify by telephone.

On March 13, 2012, Complainant filed a response to Respondent Willis's letter. Among other things, Complainant provided the following contact information for Respondent Willis:

> Raymond Willis
> Director, Research and Development
> **** ****
> 3324 *** Avenue - Suite #***
> Charleston, WV
> ***-***-5783
> **********@gmail.com

Complainant averred that Mr. Willis's supervisor at ***** ***** had confirmed his (Mr. Willis's) cell phone number as ***-***-5783.

At the beginning of the March 13, 2012 hearing, I noted that Respondent Willis had not communicated a telephone number to reach him, not to my office, or the Hearing Clerk, or Complainant's counsel. I called the cell phone number that Complainant had obtained for Mr. Willis, and left Respondent Willis a voice message, giving him the number to call my office (which number he had received previously on numerous communications), if he desired to participate in the hearing by telephone. I never heard from Respondent Willis.

The Complaint alleges that from June 11, 2008, through the filing of the Complaint on September 14, 2009, Respondent Raymond Willis operated as an exhibitor, without a license, violated three provisions of the veterinary care Regulations, and violated two provisions of the handling Regulations.[4] During that same period, Respondent Willis was the chief executive officer of Respondent For the Birds, Inc., and exercised control over that corporation. The maximum civil penalty for violations occurring from June 23, 2005 through June 17, 2008, was $3,750.[5] Since June 18, 2008, the maximum civil penalty for a violation has been $10,000.[6]

The Complainant presented evidence, in part, in the form of affidavits and oral testimony. Complainant introduced the testimony of eleven witnesses[7] and moved the admission of thirty-eight exhibits, which I admitted in evidence. I issue this Decision and Order on March 16, 2012.

Findings of Fact

1. Respondent Raymond Willis is an individual whose mailing address is *** ***** Avenue, Suite ***, Charleston, West Virginia 25302. From at least June 11, 2008, through the filing of this Complaint on September 14, 2009, Respondent Raymond Willis was chief executive officer and a director of Respondent For the Birds, Inc., and was (1) operating as an exhibitor, as that term is defined in the Act and the Regulations, and/or (2) acting for or employed by an exhibitor (Respondent For the Birds, Inc., and/or Respondent Jerry LeRoy Korn), and his acts, omissions or failures within the scope of his employment or office are, pursuant to section 2139

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[4] 7 U.S.C. § 2149(b)("Each violation and each day during which a violation occurs shall be a separate offense.).

[5] 28 U.S.C. § 2461; 70 Fed. Reg. 29575 (May 24, 2005)(final rule effective June 23, 2005); 7 C.F.R. § 3.91(b)(2)(ii) ("Civil penalty for a violation of Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of $3,750; and knowing failure to obey a cease and desist order has a civil penalty of $1,650.").

[6] 7 U.S.C. § 2149(b).

[7] The following witnesses testified by telephone: Frank Lolli, Keith Schuller, Susan Dahnke, Craig Perry, Dr. Jeff Rosenthal, Joelene Janicek Gould (whose testimony was cut short by a fire alarm in the South Building), Kelly Kitchens, John Breidenbach, Dawn Talbott, and Captain Toby Hauntz. Retired USDA Investigator Kirk B. Miller testified in person.

of the Act (7 U.S.C. § 2139), deemed to be his own acts, omissions, or failures.

2. Respondent Raymond Willis operated a moderate-sized business exhibiting farm, wild and exotic animals. The gravity of the violations alleged in the Complaint is great, and include repeated instances in which Respondent Raymond Willis knowingly exhibited animals without having a valid license, failed to provide animals with adequate veterinary care, and failed to handle animals humanely.

3. Respondent Raymond Willis does not have a history of violations, however, he has not shown good faith. He was made aware of the licensing, handling and veterinary care requirements of the Animal Welfare Act and nevertheless repeatedly and knowingly demonstrated an unwillingness to comply with the Act's and the Regulations' prohibition against exhibiting animals without having a valid license and requirements for exhibiting animals safely. The testimony and exhibits introduced at the hearing establish by more than a preponderance of the evidence that Respondent Raymond Willis in his capacity as principal of respondent For the Birds, Inc., operated as an exhibitor, without being licensed to do so, as alleged in the Complaint. The evidence introduced also established that Respondent Raymond Willis handled animals in a manner that exposed people and animals to harm, and that he failed, on multiple occasions, to provide minimally-adequate care to the animals in the respondents' custody, and specifically failed to provide the animals with necessary veterinary care.

4. From June 11, 2008, through the filing of this Complaint, Respondent Raymond Willis operated as an exhibitor, without having been licensed by the Secretary to do so, and specifically, operated a zoo.

5. From June 11, 2008, through the filing of this Complaint, Respondent Raymond Willis failed to have an attending veterinarian who provided adequate veterinary care to respondents' animals.

6. From June 11, 2008, through the filing of this Complaint, Respondent Raymond Willis failed to employ an attending veterinarian under formal

arrangements, and with appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use.

7. From June 11, 2008, through the filing of this Complaint, Respondent Raymond Willis failed to establish and maintain programs of adequate veterinary care.

8. From June 11, 2008, through the filing of this Complaint, Respondent Raymond Willis failed to handle animals as expeditiously and carefully as possible in a manner that would not cause them trauma, unnecessary discomfort, behavioral stress, or physical harm.

9. From June 11, 2008, through the filing of this Complaint, Respondent Raymond Willis failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, in willful violation of the handling regulations, and specifically allowed the public to handle tigers without any barrier or distance.

Conclusions

1. From June 11, 2008, through the filing of this Complaint, Respondent Raymond Willis operated as an exhibitor, without having been licensed by the Secretary to do so, and specifically, operated a zoo, in willful violation of sections 2.1(a) and 2.100(a) of the Regulations. 9 C.F.R. §§ 2.1(a), 2.100(a).

2. From June 11, 2008, through the filing of this Complaint, Respondent Raymond Willis failed to have an attending veterinarian who provided adequate veterinary care to respondents' animals, in willful violation of section 2.40(a)of the veterinary care regulations. 9 C.F.R. § 2.40(a).

3. From June 11, 2008, through the filing of this Complaint, Respondent Raymond Willis failed to employ an attending veterinarian under formal arrangements, and with appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of

animal care and use, in willful violation of section 2.40(a)(1)-(2) of the veterinary care regulations. 9 C.F.R. § 2.40(a)(1)-(2).

4. From June 11, 2008, through the filing of this Complaint, Respondent Raymond Willis failed to establish and maintain programs of adequate veterinary care, in willful violation of section 2.40(b) of the veterinary care regulations. 9 C.F.R. § 2.40(b).

5. From June 11, 2008, through the filing of this Complaint, Respondent Raymond Willis failed to handle animals as expeditiously and carefully as possible in a manner that would not cause them trauma, unnecessary discomfort, behavioral stress, or physical harm, in willful violation of the handling regulations. 9 C.F.R. § 2.131(b)(1).

6. From June 11, 2008, through the filing of this Complaint, Respondent Raymond Willis failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, in willful violation of the handling regulations, and specifically allowed the public to handle tigers without any barrier or distance. 9 C.F.R. § 2.131(c)(1).

ORDER

1. Respondent Raymond Willis, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations and Standards issued thereunder. The provisions of this paragraph shall become effective immediately.

2. Respondent Raymond Willis is permanently disqualified from obtaining an Animal Welfare Act license.

3. Respondent Raymond Willis is assessed a civil penalty of $6,000, for his violations herein.

4. The civil penalty in paragraph 3 above is to be paid, within 60 days of the date of this Decision and Order, by certified check or money order made payable to order of **Treasurer of the United States**, marked with **AWA 09-0196**, and remitted to:

Colleen A. Carroll
Office of the General Counsel
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Room 2325B, South Building
Washington, D.C. 20250-1417

This Decision and Order shall be final and effective without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see Appendix A). Copies of this Decision shall be served by the Hearing Clerk upon each of the parties, including **those whose cases were previously decided by Consent Decisions**.

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In re: CRAIG A. PERRY AND PERRY's WILDERNESS RANCH AND ZOO, INC.
Docket No. 05-0026 & 12-0327.
Decision and Order.
Filed March 29, 2012.

AWA.

Colleen A. Carroll, Esq. for APHIS.
Larry J. Thorson, Esq. for Respondents.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

Decision Summary

1. The principal issue is whether Animal Welfare Act license number 42-C-0101 should be revoked (revocation is a permanent remedy) and the individual and the corporation permanently disqualified from having Animal Welfare Act licenses. I conclude that such remedies are not needed, not justified, not reasonable, and too harsh; and that the just and appropriate remedies for the individual's and the corporation's failures to comply with the Animal Welfare Act are cease and desist orders, and civil penalties totaling $7,250.

Parties and Allegations

2. The Complainant is the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (herein frequently "APHIS" or "Complainant").

3. The Respondents, for this Decision,[1] are Craig A. Perry, an individual (herein frequently "Craig Perry"); and Perry's Wilderness Ranch & Zoo, Inc., an Iowa corporation (herein frequently "the corporation"); the individual and the corporation together are herein frequently called "Respondents".

4. The Complaint, filed on July 14, 2005, initiated a disciplinary proceeding under the Animal Welfare Act, as amended, 7 U.S.C. § 2131 *et seq*. (frequently herein the "AWA" or the "Act"), and Regulations issued thereunder. As to these two Respondents, the Regulations specified in the Complaint are 9 C.F.R. § 2.4, 9 C.F.R. § 2.40(a), 9 C.F.R. § 2.40(a)(1), 9 C.F.R. § 2.40(a)(2), 9 C.F.R. § 2.40(b)(1), 9 C.F.R. § 2.75(b)(1), 9

[1] (a) By separate Decision, I will decide the allegations against Respondent Le Anne Smith, an individual. (b) By Consent Decision issued April 21, 2006, I decided the allegations against Respondent American Furniture Warehouse, a Colorado corporation, 65 Agric. Dec. 378 (2006), http://www.dm.usda.gov/oaljdecisions/AWA_05-0026_042106.pdf. (c) By Decision issued November 16, 2009 (the first day of the hearing), I decided the allegations against Respondents Jeff Burton and Shirley Stanley, individuals doing business as Backyard Safari, when they failed to appear, 68 Agric. Dec. 819 (2009), http://www.dm.usda.gov/oaljdecisions/files/091116_AWA_05-0026_do.pdf.

C.F.R. § 2.126(a), 9 C.F.R. § 2.131(b)(1) [formerly § 2.131(a)(1)], 9 C.F.R. § 2.131(b)(2), 9 C.F.R. § 2.131(c)(1) [formerly § 2.131(b)(1)], 9 C.F.R. § 2.131(c)(3) [formerly § 2.131(b)(3)], 9 C.F.R. § 2.131(d)(1) [formerly § 2.131(c)(1)], and 9 C.F.R. § 2.100(a) (including a number of standards).

5. The Answer on behalf of these Respondents (Craig Perry and the corporation) was filed by Mr. Thorson on August 8, 2005.

6. The hearing was held during 13 days: November 16-20, 2009; and December 7-11, 2009 in Chicago, Illinois; and January 11-13, 2010 in Cedar Rapids, Iowa. Thereafter, the parties filed Briefs. The last filing, on April 7, 2011, was Respondents' Motion to Strike a Portion of the Complainant's Reply Brief.

Mixed Findings of Fact and Conclusions

7. From the last half of 2000 through June 20, 2002, the individual, Craig A. Perry, is the Animal Welfare Act licensee. From June 21, 2002 through 2005, the corporate entity, Perry's Wilderness Ranch and Zoo, Inc., is the Animal Welfare Act licensee, and Craig A. Perry is the licensee's agent. *See* the next two paragraphs.

8. The allegations addressed here run from the last half of 2000 through 2005. The corporation Perry's Wilderness Ranch and Zoo, Inc., had been incorporated since 1993. CX 67, p. 10. Animal Welfare Act license no. 42-C-0101 was issued to Craig A. Perry in about 1995. CX 1, esp. p. 1. [Craig Perry had been issued other Animal Welfare Act license numbers previously.] For the last half of 2000 through the first half of 2002 (a two-year period), Craig Perry had selected "Individual" to describe the Type of Organization that was applying for renewal of license no. 42-C-0101. CX 1, esp. pp. 5-6. APHIS thought of the licensee as "Craig Perry dba: Perry's Wilderness Ranch and Zoo" for the period that expired June 20, 2002. CX 1, p. 7. For the year beginning with the last half of 2002 Craig Perry scratched out his name in box 1 of the renewal application and marked Corporation to describe the Type of Organization. CX 1, esp. p. 8. From June 20, 2002 through 2005, license no. 42-C-0101 was in the name of Perry's Wilderness Ranch and Zoo, the corporation.

The renewal applications include the tax identification number of the corporation. CX 1, esp. pp. 9-16.

9. For his acts, omissions and failures under the Animal Welfare Act, Craig Perry is liable, and while acting for the corporation Craig Perry subjects the corporation to liability, in addition to himself, pursuant to section 2139 of the Animal Welfare Act (entitled "Principal-agent relationship established"). 7 U.S.C. § 2139.

10. The maximum civil penalty here is (a) $2,750 for each violation occurring through June 22, 2005[2] and (b) $3,750 for each violation occurring from June 23, 2005 through June 17, 2008.[3] 7 U.S.C. § 2149(b), and *see* 28 U.S.C. § 2461 note; 7 C.F.R. § 3.91(b)(2)(ii).

11. Each violation and each day during which a violation continues shall be a separate offense. 7 U.S.C. § 2149(b).

12. 9 C.F.R. § 2.4 allegation NOT PROVED, paragraph 10 of the Complaint. The Complaint alleges that Craig Perry "interfered with" and "threatened". Craig Perry was talking, by phone, to Investigator Lies, who worked for APHIS IES (Investigative Enforcement Services). Craig Perry had promptly returned Investigator Lies's call, and she was interviewing him, on December 29, 2004, about what had happened on August 1, 2004. I do not regard Craig Perry's words or loud and agitated tone of voice during that telephone call as either interference or a threat, but I can understand why APHIS took precautions. APHIS, in its Brief filed September 20, 2010, argues that Mr. Perry made "a threat (albeit only a slightly veiled one)". 2010 APHIS Br., at 11 of 56. APHIS states that APHIS was interfered with, that APHIS did take precautions, alerting the Inspector General and APHIS inspectors, and thereafter having inspectors

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[2] 28 U.S.C. § 2461 note; 62 Fed. Reg. 40924 (July 31, 1997); 62 Fed. Reg. 42857 (Aug. 8, 1997); 7 C.F.R. § 3.91(b)(2)(ii). The civil penalty for a violation of the Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of $2,750; and knowing failure to obey a cease and desist order has a civil penalty of $1,650.

[3] 28 U.S.C. § 2461 note; 70 Fed. Reg. 29575 (May 24, 2005) (final rule effective June 23, 2005); 7 C.F.R. § 3.91(b)(2)(ii). The civil penalty for a violation of the Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of $3,750, and knowing failure to obey a cease and desist order has a civil penalty of $1,650.

be accompanied. APHIS Brief filed March 31, 2011 (2011 APHIS Br.) at 5 of 19. Craig Perry was cooperative with Investigator Lies, in that he returned her call, and he answered her questions about what had happened on August 1, 2004. He talked with "no filter" which was foolish, and he vented loudly. He referred to one of Investigator Lies's colleagues as a stupid bitch. He warned Investigator Lies that he had heard of threats:

- Again, off the record, he stated that he has a friend that works in Fort Collins in a building next the USDA, APHIS building and says that USDA receives bombs threats weekly.
- He stated that "APHIS should watch out before there is another Oklahoma City bombing."

With his warnings, Craig Perry made a nuisance of himself; he made Investigator Lies uncomfortable, so uncomfortable that she alerted her supervisor and thereafter, as instructed, she wrote a memo to the Inspector General. In the **Discussion** section, I detail much of Investigator Lies's testimony and her reports, to put into context the alarming parts of Craig Perry's conversation with Investigator Lies. *See* paragraphs 35 - 43. APHIS has the burden of proof, of persuasion, by a preponderance of the evidence, that Craig Perry "interfered with" and "threatened" - - and from Investigator Lies's testimony, and from her memo to the Inspector General, I do not find that she felt "interfered with" or "threatened." She conducted an excellent interview, kept Craig Perry talking, and obtained the information she was assigned to get, about what had happened on August 1, 2004. Further, I do not find that Craig Perry "interfered with" or "threatened" the agency (APHIS) as a whole. I find the allegation NOT PROVED.

13. HANDLING VIOLATION ALLEGATIONS PROVED: 9 C.F.R. § 2.131(b)(1) [formerly § 2.131(a)(1)], 9 C.F.R. § 2.131(c)(1) [formerly § 2.131(b)(1)], 9 C.F.R. § 2.131(c)(3) [formerly § 2.131(b)(3)], and 9 C.F.R. § 2.131(d)(1) [formerly § 2.131(c)(1)]. Of the alleged handling violations, about half were proved and half were not proved. This paragraph recounts the PROVED handling violations, including those found in paragraphs 27, 29, 30 and 33 through 35 of the Complaint. The handling violations involve tiger cubs and lion cubs. Craig Perry did try to comply with APHIS requirements: he purposely chose the young tigers and young lions (cubs) for the public's photo opportunities, because

he understood the risks of the bigger, stronger, faster, more dangerous juvenile and adult tigers and lions, which he did NOT use for the public's photo opportunities.

(a) PROVED. Addressing the most recent handling violations first, I begin with paragraph 35 of the Complaint, in Loveland, Colorado, 2004 December 27, Thunder Mountain Harley Davidson Dealership. APHIS feared the cubs might go through the double-sided fireplace that Respondents were using as a backdrop. The danger was more theoretical than practical, but I acquiesce to APHIS's judgment, find that the Respondents promptly complied with APHIS's directives, find that no harm was done, and conclude that a $150 civil penalty suffices.

(b) PROVED. Next, I address paragraphs 33 and 34 of the Complaint, in Grayslake, Illinois, 2004 August 1, Lake County Fair. I have spent much time analyzing these allegations in the Discussion section; *see* paragraphs 44 - 52. Rarely have I encountered witnesses so indisputably credible as John Bogdala and his wife Mary Lou Bogdala. Yet Craig Perry and his volunteer Erich Cook were incredulous that a lion cub could have bitten John Bogdala during his photo opportunity, because John Bogdala gave no indication at all while at the exhibit that he had been bit. John Bogdala was unaware he had been bit until after he had left the exhibit. The bite did not tear John Bogdala's shirt; it did leave a mark on his skin. Bottom line is, the lion cub did bite John Bogdala; John Bogdala's physician (his wife insisted that he go) and the health authorities did everything right, and the Respondents cooperated so that the lion cub was quarantined, and no permanent harm was done. The reason that John Bogdala was bit is that the lion cub was unrestrained and climbed up John Bogdala's torso and bit him on the shoulder. Tr. 368-69. Even cubs can harm the public and here, this one needed to be better monitored or controlled in some fashion, or separated or distanced from the public, more than was done here. (John Bogdala was a member of the public, even though he had paid and come into the "private" photo opportunity.) For the two regulations (based on the one occurrence, paragraphs 33 and 34), I conclude that a $1,500 civil penalty (total for both regulations) suffices.

(c) PROVED. Next, I address paragraphs 27, 29, and 30 of the Complaint, primarily in Thornton, Colorado, 2003 February 19-22, American Furniture Warehouse. Craig Perry is certain that the 3 tiger cubs were doomed when they were denied the opportunity to nurse their mother (not by their mother the tiger, but by Jeff Burton, who in his ignorance, rather than leave them with their mother to be nursed, immediately took the 3 tiger cubs away from their mother in the heated garage, into the heated house with a heating pad). Craig Perry's veterinarian, Dr. James Slattery (RXt-17), agrees with Craig Perry, that the failure to get colostrum and the other immunity building nutrients from the mother's milk doomed the 3 tiger cubs. The APHIS large cat specialist, Dr. Laurie Gage, disagrees, citing instances where survival despite the lack of colostrum has occurred. I hold Jeff Burton about 97% responsible for the death of each of the 3 tiger cubs, at about 11 days old. I hold Timothy Carper, who arranged the donation from Jeff Burton to Craig Perry and then transported the 3 tiger cubs in his truck for about 10 hours nearly non-stop, when they were about 8 days old, about 2% responsible for their deaths. And I hold Craig Perry about 1% responsible for their deaths, on the theory that Craig Perry had a last clear chance to try to save the tiger cubs. It was too late for colostrum by the time Craig Perry learned they hadn't had any (after the first to die, in the early morning hours of February 22, 2003). Actually it was already about a week too late for colostrum by the time Timothy Carper was driving the tiger cubs to Craig Perry (February 19, 2003). *See* RXt-39A from Paul Zollman, DVM, explaining the urgency when trying to use colostrum substitute or serum; RXt-39A also shows the effort Craig Perry would make if he knew in time. I do fault Craig Perry for failing to talk to Jeff Burton as soon as he knew he was getting a donation of 3 tiger cubs from Jeff Burton. Craig Perry relied on Timothy Carper's representations and consequently assumed Jeff Burton would know the importance of colostrum. Craig Perry's veterinarian testified that that was a reasonable assumption. Perhaps, but assuming was not safe. I do not fault Craig Perry for switching the cubs' formula or for taking the cubs with him to Colorado. I find that the Warehouse was adequately heated, and that the Complaint overstates the number of hours the cubs were exhibited. Nevertheless, I conclude that the 3 tiger cubs were too young to be exhibited, even when they were in a basket before being placed on laps (Tr. 3084-85); even if they had been totally prepared by colostrum and the other benefits of nursing their mother for their exposures to the "outside

world", which they were not. Although APHIS had not specified guidelines for exhibiting baby tigers and lions, I conclude that Craig Perry should have known that these tigers were too young to be exhibited (about 10 days old when exhibited). Dr. Gage testified that 6 weeks of age should be attained, or at least 5 weeks, after the 2nd vaccinations. Tr. 4133-34. Perhaps keeping the 3 tiger cubs in the hotel room with one handler, where they might have slept more and been kept at a constant temperature, and their exposure to so many people would not have happened, and getting them the best local veterinary care, might have given the tiger cubs a sliver of a chance of surviving or eased their deaths. For Craig Perry's failures with regard to Jeff Burton's 3 tiger cubs (failing to talk to Jeff Burton as soon as he knew he was getting a donation of 3 tiger cubs from Jeff Burton; and exhibiting the 3 tiger cubs when they were too young), I conclude that a $500 civil penalty, per day of exhibition, per tiger cub suffices. As I understand the evidence, there was one day of exhibition, February 21, 2003, for all 3 tiger cubs. If I understand correctly, the 2 surviving cubs were taken to the Warehouse on February 22, 2003, but were not exhibited that day. I conclude that a $1,500 civil penalty (total for paragraphs 27, 29, and 30 of the Complaint, for all 3 tiger cubs) suffices. [There are additional civil penalties arising from this situation imposed for veterinary care violations; *see* paragraph 15.]

14. HANDLING VIOLATION ALLEGATIONS NOT PROVED: 9 C.F.R. § 2.131(b)(1) [formerly § 2.131(a)(1)], 9 C.F.R. § 2.131(c)(1) [formerly § 2.131(b)(1)], 9 C.F.R. § 2.131(c)(3) [formerly § 2.131(b)(3)], and 9 C.F.R. § 2.131(d)(1) [formerly § 2.131(c)(1)]. Of the alleged handling violations, about half were proved, and about half were not proved. This paragraph 14 recounts the NOT PROVED alleged handling violations, including those found in paragraphs 21 through 23, 24, 25, 31 and 32 of the Complaint.

(a) NOT PROVED. Addressing the most recent handling violations first, I begin with paragraph 32 of the Complaint, in Tucson, Arizona, 2003, April 21, Pima County Fair. *See* Respondents' Brief filed January 20, 2011 (2011 Respondents' Br.), at 21 of 41. NOT PROVED.

(b) NOT PROVED. Next, I address paragraph 31 of the Complaint, regarding transporting two tiger cubs from Jackson, Minnesota to Colorado, 2003 February 25-26, donated from Vogel's Exotics. Craig Perry obtained health certificates for these two tiger cubs, but not until after he had transported them. CX 33, p. 4. CX 23, p. 3. RXt-36, p. 2. The allegation seems to be that Craig Perry should have gotten the health certificates before he transported them. What is cited, is 9 C.F.R. § 2.131(b)(1) [formerly § 2.131(a)(1)] (perhaps intended to address these two tiger cubs a couple of months later in Tucson, Arizona, 2003, April 21, Pima County Fair), which was NOT PROVED.

(c) NOT PROVED. Next, I address paragraph 25 of the Complaint, from Dr. Bellin's visit to Cedar Rapids, Iowa, 2003, February 1, Cedar Rapids Sportsmen's Show. The evidence (CX 20 and Tr. 562-78) shows that Dr. Bellin anticipated that something might go wrong in the photo opportunities. Dr. Bellin's inspection was prior to exhibition; Dr. Bellin insisted Craig Perry get leashes and collars. Dr. Bellin also has concerns about disease transmission (from young tigers and lions to humans; and from humans to young tigers and lions). The allegation that Craig Perry's handling of the young tiger and lions in photo opportunities was inadequate comes entirely from Dr. Bellin, who does not believe that members of the public can touch young tigers and lions safely. Dr. Bellin has concerns about "bites, zoonotic disease transmission, toxoplasmosis to pregnant women. The list can go on." Dr. Bellin has concerns about "fomytes" being transmitted. Dr. Bellin has concerns about humans bringing from their housecats panleukopenia that the young tigers and lions could get. Dr. Bellin: "If you own a cat that happens to have it and then you go sit down for a photograph of that person's lion or tiger there, and you accidently cough, sneeze or you're allowed to touch it or pet it and still have the virus, because some viruses can last up to six to ten hours in sunlight, some can't. But some can live up to six to ten hours after --
Q On your clothes or whatever?
A Right, and you go up there and you've just given that animal panleukopenia. So, requiring photo opportunity subjects to wash their hands before and after the photo opportunity may be helpful but could not be expected to eliminate all transfer possibilities. Although Dr. Bellin cannot envision any safe photo opportunity where the members of the public can touch young tigers and lions, Dr. Bellin never saw any

violation, nor was he aware of any violation having occurred. NOT PROVED.

(d) NOT PROVED. Next, I address paragraph 24 of the Complaint. One lion cub, Shelby, had ringworm, which is contagious. Shelby was being treated with an ointment, but the allegation is that the proper precautions were not being taken to prevent the spread of ringworm from the lion cub Shelby. I agree. *See* paragraph 15(d), where I find a veterinary care violation. The photos in CX 17 that show Shelby being touched by humans and other cubs were not made during exhibition. Rather, the handler Lindsay Pierce, who was a vet tech student, is shown with Shelby, together with Lindsay's sister. From Dr. Gage's testimony, I know that Shelby was not sufficiently isolated to prevent the spread of ringworm to humans and other animals. Tr. 4128-32. What is <u>not</u> proved, is exhibition to the public of an animal with ringworm. NOT PROVED.

(e) NOT PROVED. Last, of the handling allegations that were not proved, I address paragraphs 21-23 of the Complaint, Albuquerque, New Mexico, 2000, September 10, New Mexico State Fair. I conclude that, if the 4-month old tiger cub put her mouth on Richard Namm's left forearm, that occurred because of Richard Namm's behavior in disobedience to Jason Karr's repeated instructions. Richard Namm's testimony (Tr. 62-123) has troubling internal inconsistencies. Jason Karr (Craig Perry's employee) had been subpoenaed to the hearing (Tr. 910) but failed to appear. I do have Jason Karr's deposition from the civil suit filed by Richard Namm. CX 13 and CX 13a. [Richard Namm's intended target was really the State of New Mexico, but that did not work out.] Richard Namm testified that the photo opportunity exhibit operator, Jason Karr, acknowledged during the photo opportunity that the young tiger had bitten Richard Namm. Jason Karr's testimony was that Mr. Namm had a little red spot on his wrist that was not bleeding (CX 13, p. 52), and that he (Jason Karr) was not aware of any other injury to Mr. Namm. Jason Karr's testimony was that "they left like nothing had ever happened" (speaking of Richard Namm and the two who had accompanied him). CX 13, p. 13. Jason Karr's testimony was that he had had to instruct (3 times) Richard Namm not to pet the tiger cub on her head and face down in

front of her eyes and across her nose. CX 13, p. 50-51; RXt-1. Jason Karr's testimony was that the tiger cub had not lunged toward the woman sitting next to Richard Namm or the child on the woman's lap. CX 13, pp. 51-52; p. 13. I conclude that lunging would have been prevented by the hold Richard Namm had on the cub. Tr. 103. The photograph at CX 4 is instructive, as was Mr. Thorson's cross-examination. Tr. 87-107. Richard Namm's description of the tiger cub's teeth is not credible. Richard Namm's estimate of the tiger cub's weight (whether 75 pounds, or 50-55 pounds - -"I thought it weighed about 50, 55 pounds mainly because I was able to hold it somewhat control" Tr. 112) is not credible. Jason Karr's testimony was that the 4-month old tiger cub weighed about 20 pounds (CX 13, p. 9), a more credible estimate. Upon weighing the evidence, including Richard Namm's course of action as he left the photo opportunity, both while still on the fair grounds and subsequently during medical attention and litigation, I find Jason Karr's recounting of what happened on September 10, 2000 more credible than Richard Namm's recounting of it. I find this true even though Jason Karr is a convicted felon and Richard Namm is a veteran and a federal employee. From my evaluation of the evidence on this topic as a whole, I am puzzled as to Richard Namm's decision to undergo rabies prevention shots, which do not appear to have been necessary. I do not believe that the cub could not have been located for testing as Richard Namm testified. Tr. 99-100. A preponderance of the evidence does not show that the cubs used for photo opportunities on September 10, 2000 at the New Mexico State Fair needed to be better monitored or controlled, or more separated or distanced from the public; I conclude that the allegations that Craig Perry committed handling violations on September 10, 2000 are NOT PROVED.

15. VETERINARY CARE VIOLATION ALLEGATIONS PROVED: 9 C.F.R. § 2.40(a), 9 C.F.R. § 2.40(a)(1), 9 C.F.R. § 2.40(a)(2), 9 C.F.R. § 2.40(b)(1). Of the alleged veterinary care violations, I find that all but one were proved, at least in part. This paragraph recounts the PROVED veterinary care violations, including those found in paragraphs 12, and 14 through 18, of the Complaint.

(a) PROVED. I address paragraph 18 of the Complaint, regarding transporting two tiger cubs from Jackson, Minnesota to Colorado, 2003 February 25-26, donated from Vogel's Exotics. Craig Perry obtained health certificates for these two tiger cubs, but not until after he had

transported them. CX 33, p. 4. CX 23, p. 3. RXt-36, p. 2. Craig Perry should have gotten the health certificates before he transported them. A $150 civil penalty as to each tiger cub suffices; thus a total civil penalty of $300 (for both tiger cubs) suffices.

(b) PROVED. Next I consider paragraphs 14, 15 and 17 of the Complaint, regarding primarily Thornton, Colorado, 2003 February 19-27. I find these proved, but ONLY as to the 3 tiger cubs donated by Jeff Burton. Craig Perry should have had a veterinarian inspect the 3 tiger cubs, preferably before leaving Iowa for Colorado. When symptoms arose for which emergency care should have been sought locally, February 22, 2003, each of the 3 tiger cubs would live only one day or less before death at the age of 11 days old; thus for one day ONLY it is appropriate to penalize Craig Perry for failure to obtain emergency care. Craig Perry did obtain veterinary advice by telephone, but of course no examination was conducted. To the extent that these allegations were intended to cover animals other than the 3 tiger cubs donated by Jeff Burton, I find them not proved. For failure to have the 3 tiger cubs inspected before leaving Iowa, a $150 civil penalty as to each tiger cub suffices; thus a total civil penalty of $450 (for 3 tiger cubs) suffices. For failure to obtain emergency care, a $500 civil penalty as to each of the 3 tiger cubs suffices (as to all 3 regulations); thus a total civil penalty of $1,500 (for 3 tiger cubs) suffices. [Additional civil penalties arising from this situation were imposed for handling violations; *see* paragraph 13.]

(c) PROVED. Now I consider paragraph 16 of the Complaint, regarding the "home base" in Iowa, 2003 February 27, through March 10. Dr. Burden had inspected on February 27, 2003 and dated his report March 10, 2003. CX 22. Concerned that the 3 tiger cubs donated by Jeff Burton had not received emergency veterinary care when on February 22, 2003, they showed vomiting, listlessness, and dehydration, Dr. Burden examined the emergency care plan. CX 22. Regarding CX 21, there was an emergency care plan; but there was a separate space for another emergency care plan for exotic animals, which had been left blank. The noncompliance was, that the blank needed immediate completion. CX 22. A $150 civil penalty suffices.

(d PROVED. Addressing paragraph 12 of the Complaint, regarding Fort Collins, Colorado, 2002, October 26, American Furniture Warehouse, this concerns lion cub Shelby's ringworm. *See* paragraph 14(d). From Dr. Gage's testimony, I know that Shelby was not sufficiently isolated to prevent the spread of ringworm to humans and other animals. Ringworm is a fungus that can be spread by its spores, even when there has been no contact with a lesion. Tr. 4136-39. *See also* Tr. 4128-32. A $500 civil penalty suffices.

16. VETERINARY CARE VIOLATION ALLEGATION NOT PROVED: 9 C.F.R. § 2.40(b)(1). Of the alleged veterinary care violations, I conclude that one was not proved. This paragraph recounts the NOT PROVED alleged veterinary care violation, found in paragraph 11 of the Complaint, regarding Albuquerque, New Mexico, 2000, September 10, New Mexico State Fair. I have considered carefully APHIS's argument. 2010 APHIS Br., at 34-41 of 56. Contrary to APHIS's allegation and argument, I do not find Jason Karr inadequate to the responsibility he had. *See* paragraph 14(e). NOT PROVED.

17. BOOKKEEPING VIOLATION ALLEGATIONS NOT PROVED. 9 C.F.R. § 2.75(b)(1). The alleged bookkeeping violations, in paragraph 19 of the Complaint, were not proved and were frustrating to deal with. I'm disappointed in APHIS that these items were written up as noncompliance items. Dr. Bellin's analysis (or that of Inspector Beard or other co-worker(s)) failed to take into account animal births at home and animal deaths and their impact on inventory. The Record of Animals on Hand (RXt-60) was apparently not referenced adequately by Dr. Bellin or Inspector Beard or other co-workers. (Were only the Form 7020s looked at?) Disproving these alleged noncompliances has been an expensive process for Respondents to set the record straight. Didn't someone at APHIS consider it odd that Respondents would suddenly develop so many failures in accounting for their animals? Tr. 3127. Craig Perry testified that they had thought the inventory of animals had to kept from the beginning of time (Tr. 2983); Steve (Dr. Bellin) is the one that said you don't need to do that. All you need to do is keep the ones that you have on hand for that. Okay. Tr. 2983. (Dr. Bellin) also told us that we only needed to keep the 7020 forms for one year. So we started disposing of them after one year. Tr. 2983.

Mr. Thorson did an excellent job of walking us through the Record of Animals on Hand (RXt-60) and other documents to deal with the allegations, animal by animal. RXt-50 shows disposition (sale) on October 18, 2003 of 2 African lions (6-week old), 1 Zebra (gelding, 4 years old), and 1 ZeDonk (male, 3 years old). Tr. 3040-42. Thus, the allegations in paragraph 19. ii. and 19. iii. are nullified. RXt-51 shows that Dr. Slattery euthanized Bobby, a 17 year old bobcat, on October 13, 2003. Tr. 3043-44. RXt-60, p. 6. Thus, the allegations in paragraph 19. x. and 19. xi. regarding the bobcat are nullified. RXt-52 shows disposition (donation) on June 11, 2003, of 1 Zorse (2-1/2 months), 1 camel (born 5-4-03), and 1 tiger (born 11-21-03). Tr. 3047-58. RXt-60, Tr. 3098-3101. Thus, the allegations in paragraph 19. iv., vii. (except the birthdate is obviously mistaken, and *see* RXt-60, page 5, which shows 2 tigers born at home, and the date 11/21/03 has been corrected to 11/21/02. Tr. 3108) are nullified. RXt-60, p. 5, shows disposition of multiple reindeer on January 25, 2004. Thus, the allegations in paragraph 19. i. are nullified. RXt-60, page 4 shows 2 aoudads died in April 2003 (one died in shipping, and one from injuries from being laid on). Thus, the allegations in paragraph 19.v. are nullified. RXt-60, page 4, shows another aoudad, male, bought 11-03, got rammed and died. Regarding the 2 tigers born at home 11/21/02 (RXt-60, page 5), one, the female, died on her birthdate, 11/21/02, when she got laid on; and the other, Popeye, went to Amarillo Wildlife on 06/11/03. RXt-60, p. 5. Tr. 3109. RXt-60, page 1, shows 2 tigers that were at Craig Perry's premises in February 2005. Then, RXt-60, page 3, shows Sasha and Pasha, born at home on April 4, 2002; and 3 tigers born at home on May 5, 2003. Counting the tigers on hand, all are accounted for. Tr. 3110-16. CX 35, p. 2 shows 3 eland purchased on April 11, 2003. That corresponds with the 3 eland shown on RXt-60, page 6. Tr. 3120-21. I weary. The matching goes on through Tr. 3127, and I will not detail the rest of it here. I am unhappy that these noncompliances were alleged (CX 59), in part because Dr. Bellin had instructed Le Anne Smith to rewrite and consolidate Craig Perry's animal inventory lists; Dr. Bellin had also instructed Le Anne Smith that the Form 7020 did not need to be kept for over a year. The following excerpt of Le Anne Smith's testimony (on direct examination) is instructive (she calls Dr. Bellin "Steve"). Tr. 2052-55.

A Yes, during -- during an inspection with Dr. Bellin, he had asked me to convert Craig's ongoing inventory over the years down to what was presently there because he was going through 20 pages where he felt that was an inconvenience. So, he asked me to convert it all down there. So, I did that for him.

(Whereupon, the document was marked as RXT-60 for identification.)

BY MR. THORSON:

Q Was the original inventory, this 20 pages -- was it 20 pages at least or more?

A At least.

Q Was this in your handwriting or Craig Perry's handwriting?

A Craig's. As far as I know, that inventory took him clear back probably to when he started, but it was a lot of papers for Steve to go through and Steve just asked me to simply convert it down to what there was presently.

Q Was he sitting there while you did that?

A I believe -- yes, I believe I was -- I think I did get through the whole thing while he was there.

Q So, Dr. Bellin saw this inventory at some point in time. Do you remember exactly when that was or approximate date that you would have done this?

A If -- if I can remember right, I believe it was the inspection prior to -- is it the February '05 inspection possibly? The one with Mr. Beard.

Q You can look at the Government exhibits. CX-59 and 60 I believe are the last.

A Um-hum. Yes, I believe that I did this the prior inspection to the February 5th or 15th, '05 inspection.

Q And when you say the 15th, that's the date at the bottom of the page or the top of the page?

A Oh, the bottom. I guess it would be February 8, '05.

Q All right. And as far as the inventory itself goes, you copied this from other paperwork. Is that correct?

A Yes, I did.

Q Does that explain why the dates are different on it and they go from '95 to 2005 for instance?

A Well, yes, I just -- I just went through the old inventory and it's probably not in order. I just went through the pages and what was still present, I put on this one.

Q Now, did Dr. Bellin ever tell you it had to be in order or did he tell you what order it had to be in?
A No, he told me he just wanted a condensed version so he didn't have to shuffle through so many papers.
Q Did Dr. Bellin tell you or Mr. Perry whether or not Form 7020 had to be kept for a certain period of time?
A I believe he had told me that they did not need to be kept for over a year because I would hand him the whole folder. He didn't like shuffling through all of those papers either. So, I believe he had told me that.
Tr. 2052-55.

I conclude that Dr. Bellin's instructions, which I find interfered with Respondents' bookkeeping, are additional reasons to find that no record-keeping violations were proved.

18. FAILURE TO ALLOW INSPECTION ALLEGATION NOT PROVED. 7 U.S.C. § 2146(a). 9 C.F.R. § 2.126(a). Paragraph 20 of the Complaint. Craig Perry was loading up the traveling exhibit at the time Dr. Bellin and Investigator David Watson (APHIS IES) arrived to inspect, and Craig Perry was expecting his veterinarian to arrive, and Craig Perry wanted to beat a snow storm. CX 58. As Dr. Bellin writes, Craig Perry asked if they could come back some later time. As Dr. Bellin writes, they could. Craig Perry was not told this would constitute failure to allow inspection. Craig Perry did not refuse inspection (as Dr. Bellin writes). NOT PROVED.

19. NONCOMPLIANCE WITH STANDARDS ALLEGATIONS PROVED: 9 C.F.R. § 2.100(a) (including a number of standards). This paragraph recounts the PROVED noncompliances with standards, including those found in paragraph 36 of the Complaint.
36.a. For the corroded aluminum trailer (not cosmetically appealing) (in 2000), no civil penalty is necessary.
36.b. For the cattle panels (in 2001, CX 15), a $100 civil penalty suffices.
36.c. and 36.g. For failure to remove cattle excreta (in 2001, CX 15), a $100 civil penalty suffices.
36.d. For inadequate shade for the lion (in 2001, CX 15), a $100 civil penalty suffices.

37.e. For standing water and mud (in 2001, CX 15) (after rain during 7 of the 13 days concluding with this inspection, RXt-14), a $100 civil penalty suffices.
36.f. For lack of nutritional supplements for the large felids on meat (in 2001, CX 15), a $100 civil penalty suffices. No civil penalty is necessary for frozen meat having an expiration date months before; or for thawing of meat in an igloo-type cooler instead of a refrigerator.
36.g. See 36.c., where the cattle excreta is adequately addressed.
36.i. For the lack of a (written) feeding protocol for young tiger cubs (in 2003), a $100 civil penalty suffices.
36.j. and 36.p. For failure to remove animal waste, food waste, and ice and snow (from the ice and snow, the low was 17° having fallen from a high of 51° 4 days earlier, RXt-53, p. 13), (in 2005, CX 59), a $100 civil penalty suffices.
36.k. For failure to repair the camel's wall (in 2005, CX 59), a $100 civil penalty suffices.
36.l. For failure to repair the lion's shade tarps (in 2005, CX 59), no civil penalty is necessary.
36.m. For failure to repair the wolves' shade tarps (in 2005, CX 59), no civil penalty is necessary.
36.n. For storing open packages of meat in an outdoor feed shed (in 2005, CX 59), a $100 civil penalty suffices.
36.o. For lack of nutritional supplements for the large felids on meat (in 2005, CX 59), a $100 civil penalty suffices. No civil penalty is necessary for any loss of vitamin C from the monkey biscuits (Purina primate chow) because of the great abundance of vitamin C in the fresh fruits and vegetables the monkeys ate every day; no civil penalty is necessary for the exposure to the elements of the meat remains, including bones, that the large felids were still working on.
36.p. *See* 36.j., where the waste is adequately addressed.
36.q. For the food remains (uneaten portions of a calf), that had been in the large felids' enclosure for 24 hours (in 2005, CX 60), a $100 civil penalty suffices.
36.r. For the failure to eliminate standing water (in 2005, CX 60), a $100 civil penalty suffices.

20. NONCOMPLIANCE WITH STANDARDS ALLEGATIONS NOT PROVED: 9 C.F.R. § 2.100(a) (including a number of

standards). This paragraph recounts the NOT PROVED alleged noncompliances with standards, found in paragraph 36 of the Complaint.
36.h. No violation of 9 C.F.R. § 3.137(c) was proved regarding transporting camels. The regulation itself includes the following: "*Provided, however*, That certain species may be restricted in their movements according to professionally accepted standards when such freedom of movement would constitute a danger to the animals, their handlers, or other persons." 9 C.F.R. § 3.137(c). NOT PROVED.
36.s. No violation of 9 C.F.R. § 3.129(a) was cited (CX 60). NOT PROVED.

21.In assessing the civil penalties, I have kept in mind the remedial purpose of the Animal Welfare Act, the Regulations, and APHIS's mission. I have kept in mind Craig Perry's good faith, which is obvious to me, even when on occasion he is mistaken or rash. I have kept in mind the long history Craig Perry has as an Animal Welfare Act licensee. I know of a few, those that were recounted by witnesses, of the many successes he has had which benefitted animals and people. Tr. 2184. Such witnesses testified of Craig Perry's courage and his expertise in caring for animals. I have kept in mind that Craig Perry has a prior Consent Decision, CX 61, pp. 8-10, issued in 1990, in which he admitted only jurisdiction. I am satisfied that he did invest in improving the facility as required by that Consent Decision. I have kept in mind that the business is medium in size, not highly profitable, and that Craig Perry has invested much in the vehicles and equipment and facility that are used for the animals. I have kept in mind that Craig Perry stopped offering photo opportunities with tiger cubs in about 2005 or 2006. Tr. 3081. I have kept in mind Craig Perry's efforts to comply, and his instructions to his workers to comply (Tr. 1828, 3192). Craig Perry testified: "You know, we complied to everything we've ever been asked to do, and it still isn't - - still is never good enough. You know, I don't know, it's, it's - - the problem is, with a lot of this, is if you have this blue book, is left to an inspector's discretion, in a lot of ways, there's a lot of things that aren't clear-cut in that animal care book." Tr. 3086. I have kept in mind the gravity of the violations. 7 U.S.C. § 2149(b).

22. Craig Perry's civil penalties total $7,250. The corporation is also liable (joint and several obligation) (beginning June 20, 2002) for $6,750 of that total.

23. APHIS filed proposed corrections to the Transcript on October 5, 2000, and on October 6, 2000. The Respondents filed proposed Transcript corrections on January 20, 2011.

24. The Respondents' Motion to Strike a Portion of the Complainant's Reply Brief, filed April 7, 2011, is GRANTED.

Discussion

25. February 19-22, 2003, Thornton, Colorado. The deaths of the three tiger cubs were the saddest, most tragic happenings of all the alleged noncompliances in the Complaint. More damage, more harm, was done to these three tiger cubs than to any other animals, including humans,[4] mentioned in the Complaint's more than 5 years (2000 through 2005) of alleged noncompliances. Craig Perry was third in the chain of humans who failed the three tiger cubs; he had the last clear chance to give the tiger cubs everything they needed to have a shot at survival, or to ease their deaths, and he failed.

26. The first human to fail the three tiger cubs was Jeff Burton, the custodian of the mother tiger when she birthed the three tiger cubs on February 11, 2003, in Ohio, and **never got the opportunity to nurse them**. The Findings of Fact against Jeff Burton (*see*, *Jeff Burton and Shirley Stanley, individuals doing business as Backyard Safari*, referenced in footnote 1) include:

> From approximately February 11, 2003, through February 19, 2003, respondent Jeff Burton failed to have a veterinarian provide adequate veterinary care to three unweaned infant tigers, born February 11, 2003, and instead, on or about February 19, 2003, "donated" them to

[4] If you know the Complaint, you may be thinking of Mr. Richard Namm and the treatment he underwent to be certain he would avoid rabies, and the New Mexico State Fair in Albuquerque, New Mexico, in September 2000. A reading of paragraph 14(e) shows why I do not rank as higher any damage or harm suffered by Mr. Namm.

> respondent Perry's Wilderness Ranch, and transported them by truck from Ohio to Iowa.
>
> On or about February 19, 2003, respondent Jeff Burton failed to handle animals as expeditiously and carefully as possible in a manner that would not cause trauma, unnecessary discomfort, behavioral stress, or physical harm, and specifically, "donated" three 8-day-old infant tigers to respondent Perry's Wilderness Ranch, and caused the transportation of the three infants by truck from Ohio to Iowa, for use in exhibition.

27. The second human to fail the three tiger cubs was Timothy Carper (Tr. 692-721). Timothy Carper was the go-between, the man who "brokered the deal" and then drove the three tiger cubs from Ohio to Iowa on February 19, 2003. CX 25, pp. 3-4. "It took me approximately 8 to 10 hours to get to the Perry's from Jeff Burton's. The tiger cubs slept the whole way there. I did not see them exhibiting any problems." That was Timothy Carper's recollection, as dictated to an APHIS investigator, Carl LaLonde, Jr., nearly six months after February 19, 2003. Timothy Carper continued talking:

> I know both Jeff Burton and Craig Perry from my experience in the industry. I have more than 20 years of experience with tigers and have transported animals many times for at least 16 years. Jeff Burton asked me to haul the tiger cubs out there, which I did as a favor for him and no money changed hands. I was also picking up some fence in IA to bring back home.

CX 25, p. 4.

28. By the time Timothy Carper was testifying, more than 6 years after he had given his statement to Investigator LaLonde, Timothy Carper could remember very little. Tr. 712. He was able to identify Le Anne Smith, pointing her out in the hearing room, as the person to whom he delivered the tiger cubs, carrier, paperwork, and formula that Jeff Burton had sent

with him. I was uncomfortable with Timothy Carper's testimony because it appeared that 3 tiger cubs, 8 days old, were not fed during the drive from Ohio to Iowa, more than 400 miles, which Timothy Carper recalled was approximately an 8- to 10-hour trip. It was difficult for me to believe that the tiger cubs had slept the whole trip; that that, in itself, was not a problem. Timothy Carper had been an Animal Welfare Act licensee. And also during that time he was a corrections officer. Tr. 693. In 2003, Timothy Carper had a good understanding of the APHIS paperwork utilized for a donation such as that of the three tiger cubs. When Timothy Carper testified, he minimized his responsibility in the transfer. Not until Craig Perry testified, did I realize that the transfer of the three tiger cubs from Jeff Burton to Craig Perry was all Timothy Carper's idea.

29. Craig Perry testified (Tr. 3429-30 and 3431-32):
JUDGE CLIFTON: When Tim Carper communicated to you that there were these three cubs that he could or would be bringing you, what was that conversation or communication? THE WITNESS (Craig Perry): He was coming up to get some fence. He knew that I was out in Denver, Colorado, doing photos with cubs. He said that this Burton that does these, is federally licensed, he knows you Craig. He's seen you when you've been in Ohio with your petting zoo. This is where the guy's from. He's seen you there. And anyway, he had this litter of tiger cubs, and if you would like them, you know, they've got full time jobs, and if you'd like them, I'm coming up that way and I'll bring them.
Tr. 3429-30.
* * * *
THE WITNESS (Craig Perry): Carper. What it was is he explained to me that these folks had seen me, that, you know, I may know of them. They do animal education shows. They're federally licensed. They go around doing school programs, things of that nature. So already I'm geared up on this individual knows what he's doing, you know, he's licensed, going around giving educational programs, et cetera, things of that nature. He works with big cats, he's, you know, he's done commercials, you know. Tim's explaining all this to me. But he's got these three cubs, you know. They've also got full-time jobs. They don't have time, you know, what it takes to take care of these cubs. I recommended you.

I'm going to be up your way. I'll bring them to you if you can use them. Okay, well we like the younger ones, as I've expressed before. So, I said sure, Tim, bring them with you, you know.
Tr. 3431-32.

30.I fault Timothy Carper for failing to communicate to Craig Perry the circumstances surrounding the tiger cubs' birth. Surely Timothy Carper understood the critical importance of colostrum and how devastating it was that the three tiger cubs hadn't had any. Timothy Carper was delivering to Craig Perry three adorable little ticking time bombs, with no warning. Timothy Carper had no business involving himself in Jeff Burton's situation without having gotten to the bottom of it. Not until after the first of the three tiger cubs died, did Craig Perry find out from Jeff Burton, after telephoning him, the circumstances surrounding the tiger cubs' birth.

31.Craig Perry testified (Tr. 3243-79):
Q (by Mr. Thorson) Now after the first day of exhibiting the cubs, do you know how long that was by the way, that the cubs were on "exhibit"?
A (by Craig Perry) The first day probably like, this is a guess, but I think it was from, again I'm guessing. I think it was from like three to seven.
Q And did the cubs exhibit any signs of illness during that first day that you were there?
A No. No, I've used cubs that size many times and, you know, they were acting no differently than any other cub I ever used before.
Q Did you feed them during that period of time?
A Oh, absolutely. I fed them prior to that time, during that time, you know.
Q And again, were they defecating normally or were they --
A Oh, yeah. They were eating fine, urinating fine, defecating fine. I mean there were no signs, you know, anything in their stools. I mean, there was no reason to believe anything was wrong.
Q Did you see any type of discharge from the cubs that would be unusual like blood or something like that?
A No. If I'd seen that I'd address it right away.
Q And you took the cubs back to your hotel room that night, is that correct?

A That's correct.
Q What happened that night? Did one of the cubs die?
A Yup.
Q And when did you find out about that?
A Well, early the next morning.
Q When you got up early the next morning, did you go see what was going on with the cubs? Did you think they had to be fed, did you --
A I had a routine I did with them every night, you know. We love what we did. And we'd always get them out every night, you know, maybe play with them. You know, just let them enjoy being tigers. Everybody enjoyed, you know, it really was a great time.
And so -- going to get hungry, we normally stayed up, me and the guys until like 11:00, 12:00 because you know, the little shits wanted to eat late, so we'd just stay up and watch TV or whatever. We'd give them their final feeding and then the guys would go to their room and I'd just go to bed.
And I'm a light sleeper from being on a farm, so the minute they'd start crying I'd get up. And there's a microwave, refrigerator, formula, so, wonderful things. So, I hear them crying and I get up and you know, they're crawling for the door. So I feed them and one didn't come to the door. You know, that's not uncommon. So, you know, I look in the door after feeding the other two and went in their den.
Q And after that happened did you try to call somebody? Did you try to get a hold of your veterinarian? What did you do?
A Yeah, I got their 24-hour call thing, and she said she'd contact Dr. Slattery as soon as possible, and I said, ma'am, I need to hear from him soon.
Q Did you try to talk to other people like Le Anne and tell her what had happened and have her try to get a hold of Dr. Slattery?
A Yeah.
Q At that point in time did you think, or what did you see when you went to the dead cub? Was there something you'd seen when you looked at the dead cub?
A Yeah, he had blood coming out of his mouth, you know, like he vomited blood. And what I first thought was, is he got a hold of something in the cage. But we always put the same thing in the cages so they can't hurt themselves, you know, towels and everything. So I got the other two all taken care of and I'm looking the dead one over and I'm looking down his mouth and I'm trying to figure out what could have

possibly happened, you know, because I had no idea why this cub would perish, you know.

Q And after you, do you remember what time it was that Dr. Slattery finally got a hold of you?

A I don't remember everything exactly as far as times because I was, before I leave home I would always stop by Sam's and I would pick up, you know, all the ink, all the paper, you know, the formula, you know, the stuff to make the formula that, you know, and then a card, you know, a calling card because back then, you know, they didn't have the national plan for U.S. Cellular that we got now. I mean you can take a look at these phone bills that we supplied and you can see that.

So what I would do to save money is a lot of times I'd use a phone card, you know, and then if somebody really needed to get a hold of me while I wasn't at the hotel, which pretty much everybody had the number at the hotel because we were there all the time. If I'd make a call out, I'd do it from the hotel on the phone card after like 10:00. You can tell from the phone bills that I'd start utilizing the cell phone because I wasn't at the hotel. It was an inconvenience to walk all the way out to where the phones were at American Furniture.

So I just remember just as soon as I heard the other cubs crying, I got up and you know, I called him.

Q Did you stay up then after that happened or did you go back to bed or what happened?

A Oh no, I didn't go back to bed. I mean I was calling and calling and calling, you know, and then Dr. Slattery called me back.

Q And did you discuss with him the symptoms of the cub had shown or what had happened?

A Yes, I did.

Q And did Dr. Slattery say something to you at that point in time and tell you what his diagnosis was at this point?

A Yeah, he said Craig, he says you've raised a bunch of these. He says, I know you know what you're doing. He says I think what it was was that I don't think these cubs are getting colostrum.

Q And when he said that did you then decide you were going to try to call somebody else about the situation?

A He told me that I needed to call the guy I got the cubs from and find out if they got any colostrum. And I says, I said this guy has been doing, he is

USDA licensed, he's been doing animal education courses with big cats for a long time. I said personally I don't really know the guy but I know a lot about him. You know, I said I can't imagine anybody raising anything doing something like that.

He says well Craig, he says I'm just telling you what the symptoms are. He says it sounds like they never got colostrum. He says call the guy up, find out, have him take you through the birthing process, you know, and then you'll know for sure and then we can go from there. And he says call me back as soon as you get a hold of the guy. And I said all right.

Q Now did you attempt to call Mr. Burton then during that day?

A Yes, I did.

Q And if you'd look at RXT31 for me. Is that the cell phone bill that you would have received back in March of 2003?

A Correct.

Q And if you would turn to page what's been marked 16 and 16 of that exhibit.

A Okay.

Q There are calls made to a Waynesfield, Ohio on that. Do you see those calls?

A Yes, I do.

Q And it looks like there are numerous attempts to call Ohio. Do you know when you were finally successful in getting a hold of Mr. Burton?

A Yeah, it was earlier. It was probably right at that, it was in the morning at some point.

Q So what time was the exhibit opened at American Furniture?

A 10 a.m.

Q Okay. So would you have been using a phone card prior to 10 a.m.?

A Correct. At the hotel.

Q Okay.

A And that's, there's probably 50 more calls on here.

Q Did you talk to Mr. Burton that day then?

A Yes, I did. I talked to him that morning.

Q Okay, and what did Mr. Burton tell you about the situation?

A I called him up and I said can you, this is Craig Perry. I said I wanted to know if you could take me through the birthing process of these cubs. He goes, yeah, that's no problem, why? And I said well it's just, I was just wondering about it, you know, if you could take me through the birthing process of the cubs.

He goes yeah. He said that's why you got them is because you know, we've both got jobs, blah, blah, blah, blah, blah, you know, and he says from the minute it started it was a major inconvenience. He said it was Ohio, which they were, was having the record snow storm. And the tigress, the mother to these cubs began whelping.

And so he said, I'd just got home from work, and you know, this was a tiger that we used for animal education courses. So he says, I took a bunch of straw. And he says I bedded down the stock trailer with a little bed. He says I put her on a leash, he says I walked her from her habitat into the back of the stock trailer and shut the door.

I said, okay. He says I had a heated shop. He says I pulled the stock trailer into the heated shop and just as soon as I did that, she laid down and started giving birth. And I said okay, take me through the rest of it. He says well, he says my girlfriend was there. He says she had a heating pad in her house and as each cub was born, he says I would hold the cub up to its mother. And I said so it could suckle. And he said, no so she could lick him off.

And I said okay, then what happened? And he says well them we took them directly into the house and put them on a heating pad. And I says okay, I said so that process was repeated what, three times? And he says yes. And I said so I understand this, none of those cubs ever nursed their mother. And he says, no it was her first litter and she wouldn't have known what to do anyway. I said okay.

So I said what did you do? He says well, we took them in the house and they started eating right away, which I knew was complete bologna because no cub starts eating right away. But anyway, I said so did you give them colostrum then being that you're now feeding them. And he says colostrum, what's that?

And I says well, what did you feed them? Even thought there's my answer, I said what did you feed them? And he said well I gave you the formula. And I says so that's what you fed them. I said that's what they got, that's all they ever got. And he said, yes. And I says well do you realize what you've just done? Have you got --

Q And did he have a response for that at all or not?

A I didn't know.

Q He said I didn't know?

A He said I didn't know. He didn't even know what colostrum was.

Q Now we talked a little bit about your experience with cubs that had not received colostrum before this in your previous testimony. Were there other animals that you also got colostrum for besides lion cubs or exotic animals?
A Yeah.
Q What other types of animals?
A My kids. I had a horse that was in foal. And on one of our wonderful Iowa weather nights it started to storm as this mare foaled. And lightening (sic) killed her but not the foal. So Stormy, as she was named, the little colt, beautiful little colt, I ran and got colostrum for her. Because I knew without it, there was no future to her either.
Q Was this prior to the tiger cubs dying in February of 2003 that this incident with the horses?
A Yeah. This was like '99 or something like that.
Q Had you had other experience with colostrum or getting colostrum for young animals prior to that?
A Oh yeah. Anybody that raises livestock, you know, runs a pet store, it's common knowledge.
Q After you had your conversation with Mr. Burton about the way the cubs were born and the fact they didn't nurse with the mother, did you talk to your veterinarian again?
A Oh, immediately. I called Jim immediately.
Q Okay. And what did Jim tell you at that point in time?
A He said, Craig you've already lost one cub. He says whatever virus the one has contracted, he says at this, I don't remember from, I remember what was said, I don't, word for word.
Q Well based on the gist of what he said.
A The gist of what he said was is at this late stage in the game there's absolutely nothing we can do for these cubs. It doesn't matter if you spend $700 or $7,000 a piece on these cubs. There's absolutely nothing you can do for these cubs. You know that. You've been doing this long enough. Anything that's gone this long without colostrum is not going to survive, you know.
And then he went into the explanation of course, that I already know, you know, that after, you know, after so much time, after 18 hours of time, you know, the intestinal walls start to close down where they can actually start absorbing, you know, the colostrum. You can give them the serum, which I've done before, you know, long before this ever happened. But you know, again that was within a 24-hour period. These guys were, you

know, two weeks old. You know, so that's what, I think he was trying to comfort me because he knew there's nothing I could do and how upset I was, you know.

Q Did you take the cubs, the remaining two cubs back to the American Furniture Warehouse with you that day then?

A I took all three of them back there.

Q And where did you put the deceased cub?

A In a freezer so I could get it posted immediately.

Q And when you say post, do you mean as far as getting a necropsy?

A Correct.

Q Why did you decide to have that done in Iowa rather than, for instance, Colorado?

A Jim's my vet and that's, you know, I wanted to use my vet.

Q Tell me about the other two cubs and when they were at American Furniture Warehouse on Saturday, were they together then most of the day, or did you separate them, or what did you?

A No, there was one that was always smaller than the other three, and you know, I wanted, if anything was gonna happen, you know, because the whole time with these cubs, they never gave any indication that anything was wrong with them. You know, I'd never been through this before. You know, I know of people not getting animals colostrum, but I've never experienced it, you know.

I know what the end result is if they don't get it, you know. But, and I imagine different species of animals respond differently to it. I can't speak to that. But what I can speak to is on these particular cubs, they gave absolutely no, they ate fine, urinated fine, defecated fine up to the moment they perished. And the three of the cubs, there was one of them, you know, and that's not uncommon when you have litters, whether it be puppies, kittens, dogs, tigers and lions, leopards, whatever. You sometimes have one that's smaller than the rest and, you know, and the one that was smaller than the rest, Lindsay was there.

She showed up, you know, and she started breaking down when I told her what had happened, you know. And, which I didn't want to do because she'd been overreacting to a lot of things anyway because, anyway, different story. But, so I asked if she would please take this one, I don't think there's going to be a problem, but take this one back to the hotel.

If you have a problem, call me. So I gave her, you know, the card to my room and told her to take the cub there because there's already formula there, there were already bottles there, everything else was there, and told her to take it back to the room, you know, and if you have any kind of problem whatsoever, call me.

Q So how did she get from the exhibit to your room? Did she have her own car or vehicle, or what?

A Yeah, she had her own car. And John, John Phillips, that was another good thing that American Furniture did for us. They supplied us with a company vehicle, you know, and so we had pet porters for the cubs and we would take blankets and put over, not a blanket but like a, the hotel would let us use their towels, you know.

So we put the towels over the top of the pet porter. So what Lindsay did is she pulled her car up, and it was already warm and everything like that. So John just basically went through our daily routine and put the cub in there on the towels, and then put towels over the top of the pet porter and then carried them out to the vehicle for her, and then she, you know, everybody at the hotel knew us so, she would just walk in with the pet porter and you know, go up to the room.

Q What time of day do you think was, do you know?

A I'm guessing that was probably around two maybe.

Q And did she have instructions then to call you if something happened?

A Mmm-hmm.

Q Or did you tell her to get a hold of you? Is that a yes?

A No. That's a yes. I said if there's any problems at all, give me a call. I don't, you know, and I told her, you know, I told her, I said you know, if you think it's a problem, if you think you're going to have a problem, and you know, just give me a call. Give me a call, but I want you to know, you know, that this, there's a distinct possibility that, even though they look fine, you know, they may perish.

Q Did she call you or did you show up at the hotel room, I guess is my question. Did you eventually, you went over to the hotel room and met with Lindsay, is that correct?

A Correct.

Q Did she call you to come to the hotel room?

A Yeah, she called me.

Q And when she called you, was she upset at that point in time?

A Oh yeah, very upset.

Q Did she tell you what had happened?

A I got a call, I got a page from American Furniture that I needed to immediately go to the front sales counter, which is normally where the calls come in. So I went to the front sales counter and she was crying hysterically, and she just said the cub is dead. And I said what do you mean the cub is dead. She says the cub is dead. And I says I told you to call me if it looked like you were having any problems. She says, I'm sorry, she says, I'm sorry, this is all my fault. I fell asleep on the bed. I had the cub with me and I was laying there watching TV and fell asleep. And I said Lindsay, it's not your fault. You know, it's not your fault, it will be all right. And she, you know, she says, I don't know what to do, I don't know what to do, blah, blah, blah and I says I'll be there, I'll be there in a minute.

Q So you went from American Furniture Warehouse then to the hotel?

A Correct.

Q When you got to the hotel, did you meet with Lindsay then?

A Correct.

Q And what was your conversation like at that point in time?

A I mean, she was very hysterical and I, you know, understood. I was that morning, you know. The only difference was is you know, I kind of explained to her what the possibility was of what could happen, you know. I had no idea what was going to happen, you know. She knew that, I explained to her that these cubs didn't get colostrum, that this could be a final outcome, you know. But it was gonna happen, you know.

Q Did you try to comfort her at that point in time?

A I explained to her, you know, there's nothing you did wrong, Lindsay. It's not, it's not in your hands, you know, it's nature.

Q Did she stay around at the hotel room for a while then?

A Oh, yeah.

Q Do you know how long?

A I made her stay there for, I made her stay there for at least another half hour or so because she was trembling and you know, she was very upset and understandably, you know. She just thought it was her fault because she fell asleep, you know, and she should have called me, and you know.

Q Did you know that she was being treated for depression at that time?

A Yeah.

Q Did she say anything else about her being treated for depression? Was she taking medication at that time?

A Prior, when we first got there, she, you know, I asked her if she had got her medication yet. And she says no, I'm trying to wean myself off of it because it makes her tired or something like that, you know. But she, prior to that, you know, I didn't even know that she was being treated for anything, you know. And then she would occasionally go through these break downs, you know, and I talked to her about it.

Because she's, I thought she was a very good volunteer, you know. She was studying to be a vet tech, which I was glad to see when she came here. It sounds like she accomplished that, you know. And she really cared, you know, really cared about the animals. So anyway, occasionally she would go through these break downs, and finally one day I said listen Lindsay, I said I don't know, I'm not gonna get into your personal life or anything like that, you know, but this has really got to stop. I don't know where it's coming from, I don't know what's going on but you know, it's, I just wasn't used to anything like that, you know.

I said you got to tell me what's going on. And she says I just, she said I've never been so happy in my life. You know, and I says well why do you sit back here and cry if you're so happy. Why wouldn't you be out front where everybody else is, you know, and kind of enjoying what's going on, you know.

And she says oh, I'm just so happy, I'm just, you know, and this happened a few different times. So I said well, is there something that I need to know. And she says well, I'm a whatever, she's a, she gets depressed easy and over responds to things. Anyway she assured me she's on medication, she was going to get on it next week, blah, blah, blah, blah, blah.

And this was sometime back, you know, long before this. And I said if you're going to be working around these animals, I said, you know, you need to stay on your medication, you know, because these are just little babies, you know.

But as far as the bigger ones, you know, you're fully aware it takes a lot, you know, and that instability isn't good. So, she assured me she'd be back on her medicine, and she, she apparently was for a while because I didn't have a long, I didn't have a problem with her a long time after that.

Q Now did you have conversations with Lindsay Pierce after she left your hotel room and went home that night?

A I think, yes. Yes, I did.

Q When were those conversations?

A The next morning she called to ask how the last cub was doing.

Q And what had happened to the last cub in the meantime?
A It passed away.
Q Okay. Let's focus in again on your conversations with Lindsay. We'll get to the last cub here in a second but, did she react then to that one passing away, or was she crying at that point in time?
A Yes, she was. But I mean, she just felt personally guilty, you know. She just kept going on about how she shouldn't have fell asleep. I mean, she blamed herself for that cub, the second cub, you know, and there was really no reason for her to.
You know, she just said that if she wouldn't have fell asleep, she could have called me. But even if she called me I couldn't change the outcome. You know, that's why I told her, you know, many times.
Q After that conversation, maybe the next morning, did she call you again after that or not?
A After I told her the last cub died?
Q Yes.
A She might have called me once. I don't, she might have called me one other time after that. I don't, it had been shortly thereafter that, about how, you know, she didn't know what to do, you know.
And it could have been the same phone call when I told her the last cub died. You know, she's like, I don't know what to do, you know. It seemed like I ought to be able to do something, I feel so bad about this. That was pretty much, whether she called me one other time and told me that or you know, the time I lost the last cub. I don't recall if it was one or two phone conversations. But she had said that many times.
Q Now there's a third cub. That cub is still at American Furniture Warehouse, is that the case?
A You mean when she --
Q Well when you went to the hotel room, she was with one cub. Did you bring the other cub back with you when you went to the hotel room, or was it still at the American Furniture Warehouse?
A It was still at the American Furniture Warehouse with John and Pete and Joe.
Q And did you bring that cub back with you then, or did you back or did you go back --
A I went back --
Q Okay.

A I took the cub with me back to put it in the freezer.
Q All right, the cub that died at the hotel room, you took it back, you put it in the freezer, is that correct?
A Correct.
Q And at that point in time did you pick up the third cub?
A I brought it back to the hotel.
Q And tell me what happened to that cub.
A It passed away too.
Q When did it pass away?
A Off the top of my head, because this is some years ago, I mean obviously I remember the first one and the second one very clearly. The third on, I can't recall if it was sometime that evening.
Q Was it still eating normally?
A That was the weird thing about it. They all ate fine, they all urinated fine, they all defecated fine, you know.
Q Until they passed away?
A Until they passed away. I mean, it was like they didn't wake up out of their sleep, is basically how it happened. They would go to sleep, and --
Q When did you make the decision to do a necropsy on the cubs then?
A Well, immediately.
Q Did you try to call anybody about picking up the cubs, or you were delivering the cubs to Iowa and you still had time on your contract with American Furniture Warehouse, didn't you?
A Correct.
Q So what did you do about getting the necropsy accomplished?
A Well I called Shannon, you know, to see if she could meet us halfway.
Q And Shannon was the volunteer that testified earlier in this case, is that right?
A Correct.
Q And what was her response?
A She was working. She couldn't do it. It was too short of a notice. I mean, she wanted to help out but there was no way she could fit it.
Q So when she couldn't do it what did you do as far as getting somebody to help?
A I called Le Anne and asked Le Anne if she could get Samantha, John Phillips's fiancé to meet us.
Q Okay, and what was Le Anne's response to that request?
A She said I'll talk to him, it shouldn't be a problem, that Sam was saying that.

Q So did you take off from Colorado then on Sunday or Monday, or do you remember?
A I don't remember.
Q But at some point in time you took off with the three cubs?
A It was like shortly thereafter the third cub died, we were, I talked to American Furniture, I went and talked to Mike Bucietta, the president at the time of American Furniture, explained the situation.
I told him exactly what transpired, you know. And I need to get these to a vet. And he said Craig, do what you gotta do and loaned me their brand-new company van to do it, because all I had there was the semi.
Q Did you make arrangements to get other cubs in to come out to Colorado?
A Yes, I did.
Q Where was that arrangement made?
A With Vogel Exotics.
Q Who was going to pick up those cubs, then?
A Samantha.
Q And did Samantha go directly up to Minnesota or what did she do?
A No, she went directly to Lincoln, met us and met John.
JUDGE CLIFTON: Went directly where?
THE WITNESS: To Kevin Vogel's.
JUDGE CLIFTON: To where?
THE WITNESS: Vogel's Exotics. Kevin Vogel.
JUDGE CLIFTON: Oh, Kevin Vogel. Okay and what's the city and state nearest to that?
THE WITNESS: Sanborn, Minnesota.
JUDGE CLIFTON: Okay.
BY MR. THORSON:
Q Is that in southern Minnesota or where's that at?
A That's in southwest Minnesota.
Q And when she went there to pick the cubs up, did you send her with a cell phone then, or did you give her a cell phone?
A I had her take the Durango, I had her take a cell phone, I had her take cash, you know, for gas. It's a long trip.
Q Did she then meet you someplace?
A In Lincoln.
Q And were you driving out to Lincoln with somebody else?

A Yeah, John Phillips. Samantha is his fiancé, or was at the time. They've since parted.
Q So you met in Lincoln, Nebraska, is that correct?
A Correct.
Q Did you meet anybody else in Lincoln, Nebraska besides Samantha?
A Yes.
Q Who?
A Le Anne.
Q And Le Anne came directly from --
A From, just as soon as her mom could watch the kids and she had to borrow her mom's car, and then she met me and John.
Q And when she met you and John, did you, did she go back home then again?
A We had breakfast and, yeah. The four of us ate breakfast and then they turned around and they all went back with the cubs.
Q So Le Anne took the cubs back to your veterinarian?
A Correct.
Q When you got back to Colorado, or before you got back to Colorado, were you getting phone calls?
A Oh, yeah.
Q From who?
A Elizabeth Kelpis.
Tr. 3243-79.

32. The handling allegations in the Complaint against Craig Perry and the corporation concerning the three tiger cubs are found in paragraphs 27, 29, and 30 of the Complaint. Craig Perry is a very credible witness, although I do find he was wrong about some things he was sure of. Listening to the testimony of Lindsay Pierce at the hearing, I thought there was significant conflict between her testimony and Craig Perry's, until she produced her diary that she had kept during those days. Lindsay Pierce's notes corroborated Craig Perry's testimony, particularly that he had told her how essential it was for the babies to have gotten colostrum. Lindsay Pierce had forgotten that part by the time she testified, six years after the deaths of the three tiger cubs. Lindsay Pierce had forgotten Craig Perry's explanation of the importance of colostrum, but on cross-examination she produced the diary she had kept during those days, and I find great value in her notes. CX 16a.

33. The third human to fail the three tiger cubs was Craig Perry. I've already stated that Craig Perry is a very credible witness: (a) First, Craig Perry speaks with no "filter" - - he says what he thinks without counting the cost. (b) Second, Craig Perry is experienced with many of the types of animals regulated under the Animal Welfare Act, and he has the animals' best interests at heart. (c) Third, Craig Perry is intelligent and has excellent recall. Nevertheless, I disagree with Craig Perry's conclusions on a few important issues, including whether he could have done something to prevent the deaths of the three tiger cubs.

34. The first tiger cub to die, died in the early morning hours of February 22, 2003. Craig Perry had had the three tiger cubs only three-four days. February 22, 2003 (a Saturday) was the day Craig Perry needed to take all 3, alive or not, to a local, qualified veterinarian.

35. December 29, 2004, Over the Telephone. More than seven years ago, on December 29, 2004, Craig Perry vented frustration and anger over the telephone to an APHIS investigator who seemed willing to listen, Katherine L. Lies. About five years later, on the first day of the hearing (November 16, 2009), Investigator Lies testified, in part (Tr. 280-87):

BY MS. CARROLL:
Q And did you have occasion to conduct an interview of Mr. Perry?
A Yes, I did.
Q And do you recall the circumstances of your interview?
A Yes, I do.
Q Can you describe what you did?
A At first I tried to interview Mr. Perry by going to his home to see if I could contact him. I was informed that he wasn't there. I left my business card, left the facility and then I would say approximately 10 minutes or so later I got a voice message from Mr. Perry asking me to return his call, which I did. So the interview was conducted over the phone.
Q And when was that interview conducted?
A I believe December 29th of 2004.
Q Did you introduce that topic?
A No, I did not.
Q And what did Mr. Perry tell you?

A He Q Okay. And did you memorialize that interview?
A Yes, I did.
Q Okay. Without looking at the document that you prepared to memorialize that interview, can you just describe how the interview was conducted and generally what was discussed?
A Basically like I said, it was over the phone. I returned his call. I documented the details of our conversation by taking notes as we spoke on the phone.
Q And you were in your car?
A Yes, I was.
Q Pulled over?
A Yes, I was.
Q And were you the principal investigator regarding the incident with Mr. Bogdala?
A Yes, I was.
Q And how did you come to learn that Mr. Bogdala had presented himself as having been bitten?
A I believe the case was referred to me through Animal Care IES Western Regional Office.
Q Okay. And were you located in Illinois?
A No, I am not.
Q Okay. At the time where was your geographic region?
A Iowa.
Q And about how long did your conversation take with Mr. Perry?
A I don't recall specifically but probably about 20 to 30 minutes.
Q And do you recall anything specifically today as to what you discussed?
A We did discuss the details surrounding the bite and we also discussed details surrounding some other investigations that he claimed IES and Animal Care was involved in.
explained that some of the things that he mentioned, he was venting and he seemed agitated and he was telling me about other investigations involving the death of some lion cubs, another individual that was bit. He talked about USDA, that he felt that USDA was harassing him and trying to put him out of business.
And he talked about some of the settlements that he had and that he received apology letters from USDA for misconduct. He discussed about having friends in buildings near the Federal Building in Fort Collins,

Colorado. During our conversation he mentioned that if USDA wasn't careful that there would be another Oklahoma City bombing.
He was talking that he and other people in his type of business were talking about bringing a class action suit against USDA.
Q Did he also mention any investigators in particular?
A Yes, he did.
Q Who?
A That would be Investigator Liz Kelpis, Elizabeth Kelpis.
Q And what do you recall that he said about Ms. Kelpis?
A He was pretty derogatory about her and said that she didn't know what she was talking about.
Q And do you recall any of the exact words that he used?
A He called her, the exact words?
Q Yes.
A He called her a stupid bitch and that she didn't know what she was talking about.
Q And what was Mr. Perry's demeanor at the beginning of the phone call when you first talked to him?
A He seemed agitated and hostile.
Q And he kept talking to you?
A Yes.
Q Did he answer your questions about your investigation about the Bogdala lion cub bite?
A He did. He basically stated that it didn't happen, that nothing was reported to either one of his handlers. And he mentioned something also about a waiver that he said he would send to me. He wouldn't provide me the opportunity to meet with him in person or provide me with any information pertaining to his business.
Q He told you that on the phone?
A Yes. Correct.
Q And did he send you anything?
A I believe I was sent a fax in regards to a waiver that individuals would sign before they actually posed with an animal.
Q Okay. Let me ask you to turn to Exhibit 52. Can you identify that document?
A Yes. That is the waiver that I received.
Q And you received it by fax from Mr. Perry?

A I believe so.
Q And you did document your conversation with Mr. Perry correct?
A Yes, I did.
Q Can I ask you to turn to Exhibit 40 and ask you to identify that document?
A Yes, that is the log that I created after I had a conversation with Craig Perry on the phone.
Q And you said you took notes?
A I took notes during my conversation.
Q Okay. And were the notes the basis for this interview log?
A That is correct.
Tr. 280-87.

36. What Craig Perry told Investigator Lies during that phone interview became the most serious, in my view, allegation against him. That allegation (quoting from paragraph 10 of the Complaint), that Craig Perry "interfered with and threatened APHIS officials in the course of carrying out their duties, and specifically, advised an APHIS investigator, during the course of her investigation, among other things, that USDA should 'stop conspiring with PETA' and other animal rights organization 'before something bad happens,' and that 'APHIS should watch out before there is another Oklahoma City bombing,'" in willful violation of section 2.40(b)(1) of the Regulations (9 C.F.R. § 2.4), is a serious enough allegation, if proved, to cause by itself, revocation of an Animal Welfare Act license. [Revocation is a permanent remedy and would prevent all further activity for which an Animal Welfare Act license is required, including exhibiting.] The allegation, though, does not stand up to careful scrutiny.

37. Investigator Lies is not easily intimidated. When describing her educational background, she mentioned not only high school and community college, but also training in the U.S. Army. Tr. 463. Investigator Lies testified, "When I say he was trying to intimidate me maybe I was more he was like trying to control the conversation. He wanetd (sic) to let me know what type of agency I was working for." Tr. 295. Whatever Craig Perry may have been doing to control the conversation, it is clear that Investigator Lies very effectively gathered evidence from Craig Perry about the alleged lion cub bite on Mr. Bogdala.

38. Investigator Lies documented her December 29, 2004 conversation with Craig Perry:

INTERVIEW LOG
USDA, APHIS, IES

NAME AND ADDRESS OF PERSON(S) CONTACTED:
Craig A. Perry
(address intentionally omitted here)

DATE:
December 29, 2004

TYPE OF INTERVIEW (BY PHONE OR IN PERSON):
By Phone

ORGANIZATION:
Perry's Wilderness Ranch and Zoo

TELEPHONE NUMBER:
(telephone information intentionally omitted here)

SUBJECT:
IA04050-AC; It is alleged that Craig A. Perry, USDA licensed exhibitor, failed to meet the minimum standards while exhibiting a lion cub.

LOCATION OF INTERVIEW:
Center Point, Iowa

SUMMARY:
On December 29, 2004, at approximately 01:45 pm, I attempted to contact Mr. Craig Perry at his residence in Center Point, Iowa. Upon my arrival a lady who introduced herself as Mr. Perry's fiancé informed me that Craig Perry was in Colorado and would not be back until Saturday, January 1, 2004. I told her that I was an investigator employed by the United States Department of Agriculture. I informed here that I needed to visit with Mr. Perry regarding the quarantine of one of his lion cubs due to

allegations of a bite incident. I gave her my business card and asked her to tell Mr. Perry to call me and schedule a convenient time to meet to discuss the allegations.

Approximately ten minutes later, I received a voice message on my cell phone from Mr. Perry requesting that I return his call. Within minutes I contacted Mr. Perry by phone as requested. I introduced myself to Mr. Perry as an investigator employed by USDA and told him that I would like to meet with him regarding allegations of a lion cub bite incident. Immediately, Mr. Perry stated that the incident never took place and refused to meet with me in person to discuss the situation. Also, he informed me that he was aware of USDA's investigation process and that he will not give any type of written statement and/or affidavit regarding our conversation about the allegations. He agreed to answer my questions regarding the situation, but refused to give any type of personal and/or business information. I asked Mr. Perry to provide an explanation regarding his refusal to meet in person and refusal to give a written statement. At this time Mr. Perry expressed his extreme distrust with APHIS and stated that in the past USDA has given various types of animal rights organizations, including PETA, his business information. In order to try and develop some type of trust and a level of cooperation with Mr. Perry, I told him that I understood his frustrations with USDA and tried to get him back on track regarding the allegations of the incident.

Mr. Craig Perry stated the following facts in response to my questions:

- Mr. Perry refused to verify and/or give any information regarding his business history and his business relationship with the Lake County Fair.
- Mr. Perry stated that his business relationship and details of his business are none of USDA's business.
- Mr. Perry did confirm that he was present and exhibiting his animals at the Lake County Fair in Grayslake, Illinois from July 27, 2004 thru August 1, 2004.
- He stated about two or three days after he left the Lake County Fair that he received a call from the Lake County Health Department informing him that an individual, John Bogdala, claimed to have been bitten by one of his lion cubs while posing with it for a photo on August 1, 2004.

- Mr. Perry confirmed that he was exhibiting a two month old lion cub, weighing less that (sic) forty pounds, at the fair and was offering to the general public the opportunity to pose with it for photographing purposes for a fee.
- Mr. Perry stated that the bite incident allegations are "bullshit" and that the incident did not occur.
- He stated that USDA has been after him for many years and is trying to put him out of business.
- He stated that he knows the regulations pertaining to the Animal Welfare Act and abides by them.
- He stated while exhibiting his animals at the Lake County Fair no one reported to him, his employees, fair employees, and/or to emergency officials that a bit incident occurred.
- He stated that he personally was not present and/or working at the site where the photographs were being taken, but two of his handlers were.
- He stated that his handlers, Joe Hobson and Erik, were responsible for the handling of the lion cub during the photo shoots and they did not report any type of bite/scratch incidents to him.
- He stated that his handlers are knowledgeable and well experienced regarding the handling and exhibition of his animals. And, that both of the handlers listed above have at least four years of experience.
- He stated that he trains his employees himself and does not have any type of written log documenting their training experience.
- He stated that he would never allow an inexperienced employee to handle his big cats and/or to participate in the photographing part of his business.
- Mr. Perry stated that he has a specific process in place to guard against harm to the public and his animals while participating in photo shoots.
- He explained that the photo shoots take place in a 12' X 12' cage that is surrounded by a protective barrier.
- He stated before the individual is allowed to pose with animal they are required to pay a fee and sign a waiver recognizing that

injuries can occur when coming in physical contact with wild exotic animals.

- He [] during the photo shoot.
- He stated that the animal is not on any type of leash/harness during the photo shoot, stated after the individuals pays (sic) and signs (sic) the waiver they are allowed to go beyond the barrier and enter the cage and are instructed on how to get situated for the photograph.
- He stated that Mr. Bogdala signed this waiver and that he would fax a copy to me if he could locate it.
- He stated that the animals, including the lion cub pertaining to the incident, are kept in separate enclosures.
- He stated after the individual gets situated the animal is removed from their separate enclosure and placed next to them. Also, the individual is instructed by the handler to place their hand on the back of the animal for photograph posing purposes.
- He stated that the individual is allowed to have physical contact with the animal under the supervision of the handler.
- He stated that there is always two handlers present for the photo shoot. One handler is responsible for taking the picture and the other one handles the animal,
- He explained while the individual is posing with the animal, the handler stays within two to three feet of the animal to maintain a reasonable amount of control and intervene if it decides to move.
- He stated that the animal is not allowed to jump up on and/or turn around towards the individual and that there is no type of barrier present between the individual and the animal during the photo shoot.
- He stated that his animals, including the lion cub that was on exhibition at the Lake County Fair, are vaccinated appropriately. But, he can not say for sure if the cub was old enough to have received rabies vaccinations at the time of the alleged incident.
- Mr. Perry stated that although he believes the bite incident never occurred, he allowed the lion cub to be quarantined and inspected by the Iowa Department of Agriculture in order to show that he was willing to cooperate with officials.
- He stated that his vet, Dr. Jim Slattery of the Winthrop Vet Clinic, also examined the lion cub to verify that the animal was not showing any signs of diseases.

- He stated he was not present when the quarantine was issued by the state, but it was lifted when the conditions and terms were met.
- He stated that currently the lion cub is still located at his residence.
- Throughout the phone interview, Mr. Perry expressed his frustrations with USDA regarding past incidents. He explained that another bite incident allegedly occurred a few years back in New Mexico and an incident regarding the death of three tiger cubs also occured (sic).
- He stated that another USDA investigator named Liz Kelpis, contacted him about these past incidents.
- Mr. Perry stated off the record that "that bitch does not know what she was talking about."
- He stated that USDA, APHIS, is unjustly holding him accountable for incidents that do not pertain to any type of regulations.
- Again, off the record, he stated that he has a friend that works in Fort Collins in a building next the USDA, APHIS building and says that USDA receives bombs threats weekly.
- He stated that "APHIS should watch out before there is another Oklahoma City bombing."
- He stated many individuals in the exhibition business, including him, are discussing bringing a class action law suit against APHIS.
- Mr. Perry stated throughout the interview that APHIS is conspiring with PETA and other animal right organizations and they are trying to put people out the animal exhibition business.

At the conclusion of out interview, I thanked Mr. Perry for visiting with me and told him I was sorry that I did not get to talk with him in person. I told him that I found the details of our conversation to be interesting. Mr. Perry stated he would fax me a copy of the waiver. I gave him my fax number and instructed Mr. Perry to call me if he has any questions and ended the conversation.

NAME OF PERSON DOCUMENTING INTERVIEW:
Katherine L. Lies, Investigator

SIGNATURE:
s/ Katherine L. Lies

DATE:
December 30, 2004

CX 40.

39. From the Interview Log (CX 40), it is clear that Investigator Lies conducted an excellent interview: she kept Craig Perry talking, despite the unpleasant encounters he had been having with APHIS officials. Investigator Lies took good notes, to create such a detailed Log from a "20 to 30 minute" telephone call. Investigator Lies wrote from her notes into the Log for the most part what Craig Perry said; for the most part, she did not write what she said to prompt his responses. Investigator Lies was in Iowa; Craig Perry was in Colorado. Craig Perry had responded immediately to Investigator Lies's message left with his "fiancé" and when Investigator Lies called him back, he stayed on the phone with Investigator Lies for a lengthy conversation. Craig Perry confided in Investigator Lies, in his ("off the record") complaints about another USDA investigator named Liz Kelpis, and in his ("off the record") warning that USDA APHIS in Fort Collins (Colorado) "receives bombs threats weekly" according to his friend who works in the next building, and "should watch out before there is another Oklahoma City bombing."

40. Did Investigator Lies feel threatened, intimidated, or interfered with? At the hearing Investigator Lies's testimony continued, in part (Tr. 291-98):

THE WITNESS: I have completed reading the document. (CX 40)
JUDGE CLIFTON: All right. Was there anything you wanted to add to the bullet points in CX-40?
THE WITNESS: No, there is not.
JUDGE CLIFTON: When you talked with Mr. Perry on that occasion, did you already have the photograph of Mr. Bogdala with the lion?
THE WITNESS: I do not recall.
JUDGE CLIFTON: When you wrote the description of how the photo was taken which I'm trying to find, I should have marked it when I read it.

THE WITNESS: It's about halfway down on page 2.
JUDGE CLIFTON: I think so. What I wanted to ask you, and I haven't found the specific bullet, but were you aware that the animal was on the ground or the floor and that the person posing crouched next to it?
THE WITNESS: I do not recall.
JUDGE CLIFTON: Ms. Carroll, back to you.
BY MS. CARROLL:
Q What did you do after your phone call with Mr. Perry?
A After the phone call ended I contacted my immediate supervisor.
Q Why did you do that?
A I thought some of the details of our conversation that I should alert my supervisor to them.
Q Why?
A Because I felt that the interview did not go very well and I believe some of the comments that were made were threatening.
Q Which ones were those?
A Some of the derogatory statements about other investigators and the comment about APHIS should watch out before there's another Oklahoma City bombing.
Q And did you have occasion to speak with anyone else or communicate with someone else besides your supervisor about your conversation with Mr. Perry?
A Yes.
Q Who was that?
A I believe it was a Mr. Chadwick Olms, O-l-m-s, and I believe he identified himself as security at Fort Collins, Colorado at the Western Regional Office.
Q And what did Mr. Olms ask you for?
MR. THORSON: Objection. It calls for hearsay, your Honor.
JUDGE CLIFTON: What did he ask her for? I don't know that that's being offered for the truth of the matter asserted. I'll allow the answer.
THE WITNESS: He asked me to create a memo documenting my conversation--
MS. CARROLL: And did you do that?
THE WITNESS: --and my feelings in regards to the conversation I had with Craig Perry.
MS. CARROLL: Did you do that?

THE WITNESS: Yes, I did.
BY MS. CARROLL:
Q Let me ask you to turn to complainant's Exhibit 50. Can you identify that exhibit?
A Yes, I can.
Q What is it?
A It is the memo that I sent to Mr. Chadwick Olms.
Q And it says, "during our conversation I believe Mr. Perry was trying to intimidate me by being confrontational and offensive. Many times the tone of his voice was intensive and combative." And can you describe what you mean by that?
A Um, he seemed like he really wanted to express his discontentment with USDA APHIS and he was. I mean he just seemed like he was argumentative and he was very I guess agitated and excited in regards to the reason why I needed to talk to him.
Q Now you believe Mr. Perry was trying to intimidate you. What do you think he was trying to obtain by that?
A When I say he was trying to intimidate me maybe I was more he was like trying to control the conversation. He wanetd (sic) to let me know what type of agency I was working for.
Q Did he ever shout?
A Yes, he did.
Q And besides the language that you had identified in your interview log did he use profanity?
A On occasion he did.
Tr. 291-96.

41. The "memo that I sent to Mr. Chadwick Olms" is not dated (CX 50) and to some extent re-words Investigator Lies's Interview Log. It also contains more of Investigator Lies's impressions, including:
Based on the conversation I had with Mr. Perry, I got the impression that he was not being completely honest with me regarding past investigations. At times, he seemed argumentative and hostile when talking about USDA, APHIS. He stated his hostility towards USDA was not personally directed at me and he appreciated that I was willing to listen to him.

CX 50 at p. 3.

The last "bullet points" of the memo to Mr. Chadwick Olms show a subtle shift from those of the Interview Log:

- He stated that USDA is hiring and allowing themselves to be infiltrated by animal rights activists.
- He stated that USDA is getting millions of dollars from organizations like PETA.
- He stated that USDA is biting the hand that feeds them.
- He stated that if USDA keeps trying to put people like him out of business they are going to eliminate their reason to exist and they will no longer have a job to do.
- He stated that USDA, APHIS is upsetting many people in his type of business and they are talking about bringing a class action lawsuit against USDA.
- He stated that he knows what goes on in the USDA, APHIS building in Ft. Collins, CO.
- He stated off the record that he has a friend who works in the building next to it.
- He stated that his friend has told him that APHIS gets bomb threats weekly and that she hates to go into the building.
- He stated that the APHIS personnel that work in the building believe they are above the law.
- He stated that many of the APHIS staff are animal rights activist (sic).
- He stated that, "APHIS should watch out before there is another Oklahoma City bombing."
- He stated that USDA should stop conspiring with PETA and other animal rights organization (sic) before something bad happens.
- He stated that he believes USDA is conspiring with PETA and other animal rights organizations in order to put people like him out of business.

42. Even based on APHIS's evidence, including especially Investigator Lies's testimony and CX 40 and CX 50, I do not find by a preponderance of the evidence that Craig Perry violated 9 C.F.R. § 2.4; instead, I find that allegation not proved:

§ 2.4 Non-interference with APHIS officials.
A licensee . . . shall not interfere with, threaten, abuse (including verbally abuse), or harass any APHIS official in the course of carrying out his or her duties.
9 C.F.R. § 2.4

43. The allegation in the Complaint is that Craig Perry "interfered with and threatened APHIS officials in the course of carrying out their duties, and specifically, advised an APHIS investigator, during the course of her investigation, among other things, that USDA should 'stop conspiring with PETA' and other animal rights organization 'before something bad happens,' and that APHIS should watch out before there is another Oklahoma City bombing,'" in willful violation of section 2.40(b)(1) of the Regulations (9 C.F.R. § 2.4). I find that while Craig Perry's warnings may have been wrong, mistaken, misguided, and better left unsaid, I conclude that none rise to the level of interference, threat, abuse, or harassment. From my study of the record as a whole, I conclude that Craig Perry's style is to do what he told Investigator Lies he would do: "He stated many individuals in the exhibition business, including him, are discussing a class action law suit against APHIS." That would, in my opinion, be Craig Perry's more likely course of action, certainly not violence, and not even intimidation. Craig Perry was not trying to intimidate Investigator Lies, although he obviously was quite sure of himself in some opinions he expressed to Investigator Lies where I think he was just wrong.

44. August 1, 2004, at the Lake County Fair, in Grayslake, Illinois. When Investigator Lies interviewed Craig Perry, she was investigating alleged noncompliance with animal handling regulations, on August 1, 2004, at the Lake County Fair, in Grayslake, Illinois, that included the allegation that Mr. John Bogdala was bitten by a lion cub.

45. The allegations (quoting from paragraphs 33 and 34 of the Complaint), are that Craig Perry and the corporation:
"failed to handle animals as expeditiously and carefully as possible in a manner that would not cause trauma, unnecessary discomfort, behavioral stress, or physical harm, and specifically, allowed the public to handle and feed lion cubs, in willful violation of the Regulations and, as a result of

such handling, the lion injured a member of the public, and was consequently quarantined for rabies testing. 9 C.F.R. § 2.131(b)(1) [formerly 2.131(a)(1)].

from Paragraph 33 of the Complaint. And

"failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, in willful violation of the Regulations, and specifically exhibited a lion cub to the public without any barriers or distance between the animal and the public to prevent the public from contacting the animal, and, as a result of such handling, the lion injured a member of the public, and was consequently quarantined for rabies testing. 9 C.F.R. § 2.131(c)(1) [formerly 2.131(b)(1)].

from Paragraph 34 of the Complaint.

46. Craig Perry did not believe the lion cub had bitten John Bogdala. But I do. It wasn't much of a bite; Mr. Bogdala states he did not even know he had been bitten, until later. The lion cub's bite broke the skin a little bit. Tr. 362. Mr. Bogdala, who had been a United Parcel Service delivery man, thought the bite was nothing. But, at his wife's insistence, Mr. Bogdala sought medical attention, and the medical channels worked as they should; Craig Perry was contacted to put his lion cub in quarantine, which he did.

47. The photograph of John Bogdala with a lion cub is CX 45. Craig Perry exhibited during August 2004 at the Lake County Fair, Grayslake, Illinois. Members of the public could pay to have a photo with a lion cub. Mr. John Bogdala was a patron of Craig Perry's, getting his photograph taken (CX 45), for the grandkids. Tr. 353. Mr. Bogdala testified in part (Tr. 353-54):
Ms. Carroll: Okay, and did you happen to have your picture taken with a lion cub while you were at the fair?
Mr. Bogdala: Yes ma'am.

Ms. Carroll: Could you just please describe what you did insofar as arriving at the venue for the lion cub and the process of getting your picture taken and what happened?
Mr. Bogdala: Well, I just thought it would be kind of neat to have a picture taken, you know. It's for the grandkids is what it was, and they were right across the midway from us, not too far. So I just went over there and had my picture taken, stood in line and --
Ms. Carroll: And what happened when you -- well, can you describe the enclosure or the area that you were in?
Mr. Bogdala: Yes. It's like a little 10 by 10 cage, you know, and they take you in there and bring the cub in and --
Ms. Carroll: And what happened when they brought the cub in?
Mr. Bogdala: Well, I don't know if I was holding him right or wrong or whatever, but he got up on my shoulder and he bit me, you know. I didn't even realize he bit me, but then he was kind of feisty, you know.
So he took him away, Mr. Perry I think I guess it was, and he brought in another one, a female, which was pretty docile.
Ms. Carroll: And then you had your picture taken?
Mr. Bogdala: Yes, that's the picture here I got.
CX 45 (photo), Tr. 353-54.

48. The lion cub is lying on the straw with head up, Mr. Bogdala kneeling behind, with one hand around the lion cub's shoulder. The lion cub is larger than most big housecats, but not by much. CX 45.

49. The man who "took him away" and "brought in another one" was not Mr. Perry, but was instead a handler who worked roughly full-time as a volunteer for Craig Perry, a man named Erich Cook. Mr. Cook testified in part (Tr. 1873-76):
Mr. Thorson: Were you there at that fair?
Mr. Cook: Yes.
Mr. Thorson: Were you in charge of taking photographs?
Mr. Cook: I was in charge of cub care.
Mr. Thorson: Were you around the photograph area?
Mr. Cook: Yes.
Mr. Thorson: Was there a photographer again?
Mr. Cook: Absolutely.
Mr. Thorson: This gentleman claimed that he was either bitten or scratched by that lion cub. Were you aware of that at the time of the fair?

Mr. Cook: I wasn't at the time of the fair actually.
Mr. Thorson: Just explain to the Court again what your job would be. It would be to watch that cub while they were taking the photograph?
Mr. Cook: The photographer's job was to watch the people to make sure they sat where they sat and that's what they did. My job was to watch the cats, the cubs. If the cub did anything, moved out of any area where I thought it was a safety issue, then my job was to remove the cat from that area and remove him from the people's area.
That has always been my focus was watching the cat the whole time. I don't know about this. I don't -- I guess I don't believe this happened.
Mr. Thorson: So when you were there -- and you were there most or all the time?
Mr. Cook: All the time.
Mr. Thorson: -- you never saw an incident where a lion cub would have either scratched or bitten somebody's shoulder?
Mr. Cook: Never. Never. No, because that's something, one, I would have remembered and, two, I mean, that's something I would have had to go tell Craig (Craig Perry) immediately about. I mean, immediately. If I remember, I don't think I heard anything about this guy until four days after. I think it was at the end of the fair when I first heard anything about this. Like I said, that's why because I was the man in the cage with that cat I don't believe it ever happened.
Mr. Thorson: Do you have any idea which cat this was or cub this was?
Mr. Cook: This would have been Shelby.
CX 45 (photo), Tr. 1873-76.
[Shelby was not the one that bit Mr. Bogdala; no photo was accomplished with the one that bit Mr. Bogdala.]

50. Mr. Bogdala testified on cross-examination in part (Tr. 361-62):
Mr. Thorson: And at the time, you went to the lion exhibit and you had your picture taken, were you even sure you'd been bitten or were you unsure whether you'd been bitten at all at that point in time?
Mr. Bogdala: Well, I just felt something, but when I got back to work and I looked and I could see teeth marks.
Mr. Thorson: Okay.
Mr. Bogdala: Broke the skin a little bit.

Mr. Thorson: All right. Didn't tear your shirt though, you said here (CX 41). It didn't tear your shirt you said?
Mr. Bogdala: No, no it didn't.
Tr. 361-62.

51. Craig Perry was skeptical about whether Mr. Bogdala's injury was caused by his lion cub. Tr. 3765-68. First, no report was made at the fair, not to him, not to his volunteer employees, not to any official at the fair. Tr. 3773. Second, Craig Perry questioned Erich Cook, when the month-long quarantine was imposed on his cub, and Mr. Cook reported that Mr. Bogdala's injury could not have happened on his watch. Craig Perry was not persuaded that Mr. Bogdala's injury came from his lion cub, even after hearing the testimony of Mr. and Mrs. Bogdala. Tr. 3770 - 3774.

52. Craig Perry cautiously avoided the problems an exhibitor has with older, larger, more powerful big cats (juvenile and adult big cats) being used in photo shoots with members of the public. Craig Perry chose to use cubs for the lion and tiger photo shoots. There can be problems with cubs, too. Even if hundreds and thousands of photo shoots have occurred safely with no complications, the problems become evident when a lion cub or tiger cub bites a member of the public, such as John Bogdala. Some exhibitors address the problems by not allowing touching, by placing plexiglass between the cubs and the members of the public for the photo shoots. Some exhibitors address the problems by permitting only their trained handlers (their employees) to touch the cubs; not permitting the members of the public to touch the cubs or vice versa. Some exhibitors address the problems with a "tight rein" through some type of restraint on the cubs. When the "kind of feisty" little male cub reached Mr. Bogdala's shoulder, the handling error had already occurred - - it was too late to maintain minimal risk of harm.

ORDER

53. The following cease and desist provisions of this Order (paragraph 54) shall be effective on the day after this Decision becomes final. [See paragraph 57.]

54. Respondents Craig Perry and the corporation, their agents and employees, successors and assigns, directly or indirectly, or through any corporate or other device or person, shall cease and desist from violating the Animal Welfare Act and the Regulations and Standards issued thereunder.

55. Respondent Craig Perry is assessed civil penalties totaling $7,250; the corporation is also liable (joint and several obligation) (beginning June 20, 2002) for $6,750 of that total, which the Respondents shall pay by certified check(s), cashier's check(s), or money order(s), made payable to the order of "Treasurer of the United States," within 90 days after this Decision becomes final. [See paragraph 57.]

56. Respondent Craig Perry and the corporation shall reference AWA 05-0026 on their certified check(s), cashier's check(s), or money order(s). Payments of the civil penalties shall be sent by a commercial delivery service, such as FedEx or UPS, to, and received by, Colleen A. Carroll, at the following address:

US Department of Agriculture
Office of the General Counsel, Marketing Division
Attn: Colleen A. Carroll
South Building, Room 2325B, Stop 1417
1400 Independence Ave SW
Washington, DC 20250-1417

Finality

57. This Decision and Order shall be final and effective without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see Appendix A). Copies of this Decision shall be served by the Hearing Clerk upon each of the parties, and a separate copy shall be served upon Le Anne Smith (also addressed to Mr. Thorson).

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In re: LE ANNE SMITH.
Docket No. 05-0026.
Decision and Order.
Filed March 30, 2012.

AWA.

Colleen A. Carroll, Esq. for APHIS.
Larry J. Thorson, Esq. for the Respondent.
Decision and Order by Jill S. Clifton, Administrative Law Judge.

DECISION AND ORDER

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Decision Summary

1. The principal issue is whether, since approximately February 1, 2003, Le Anne Smith, the Respondent, has been an exhibitor under the Animal Welfare Act. I conclude she has not. Further issues are whether Le Anne Smith violated provisions of the Animal Welfare Act, as amended, 7 U.S.C. § 2131 *et seq*. (herein frequently the "AWA" or the "Act"), and Regulations issued thereunder. I conclude she did not.

Parties and Allegations

2. The Complainant is the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture (herein frequently "APHIS" or "Complainant").

3. APHIS is represented by Colleen A. Carroll, Esq., with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, S.W., Washington D.C. 20250-1417.
4. The Respondent, for this Decision,[1] is Le Anne Smith, an individual (herein frequently "Le Anne Smith" or "Respondent").

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[1] (a) By separate Decision issued March 29, 2012, I decided the allegations against Respondents Craig A. Perry and Perry's Wilderness Ranch & Zoo, Inc. (b) By Consent Decision issued April 21, 2006, I decided the allegations against Respondent American Furniture Warehouse, a Colorado corporation, 65 Agric. Dec. 378 (2006), http://www.dm.usda.gov/oaljdecisions/AWA_05-0026_042106.pdf. (c) By Decision

5. Le Anne Smith is represented by Larry J. Thorson, Esq., Cedar Rapids, Iowa.

6. The Complaint, filed on July 14, 2005, alleges that Le Anne Smith violated provisions of the Animal Welfare Act, as amended, 7 U.S.C. § 2131 et seq. (herein frequently the "AWA" or the "Act"), and Regulations issued thereunder. As to Le Anne Smith, the Regulations specified in the Complaint are 9 C.F.R. § 2.40(a), 9 C.F.R. § 2.40(a)(1), 9 C.F.R. § 2.40(b)(2), 9 C.F.R. § 2.75(b)(1), 9 C.F.R. § 2.126(a), 9 C.F.R. § 2.131(b)(1) [formerly § 2.131(a)(1)], 9 C.F.R. § 2.131(c)(1) [formerly § 2.131(b)(1)], 9 C.F.R. § 2.131(c)(3) [formerly § 2.131(b)(3)], 9 C.F.R. § 2.131(d)(1) [formerly § 2.131(c)(1)], and 9 C.F.R. § 2.100(a) (including a number of standards).

7. Le Anne Smith, through Larry J. Thorson, Esq., filed her Answer on August 8, 2005. Le Anne Smith denied, in her Answer and repeatedly thereafter, that she was an exhibitor, that she had any obligations under the Animal Welfare Act, that she had a business exhibiting animals, and that she had any obligations to the business. Affirmatively, Le Anne Smith asserted that she was not a shareholder, officer, director, or employee of the corporation.

8. The hearing was held during 13 days: November 16-20, 2009; and December 7-11, 2009 in Chicago, Illinois; and January 11-13, 2010 in Cedar Rapids, Iowa. Thereafter, the parties filed Briefs. The last filing, on April 7, 2011, was Respondents' Motion to Strike a Portion of the Complainant's Reply Brief, which I granted in the Decision regarding Craig Perry and the corporation, p. 25.

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issued November 16, 2009, I decided the allegations against Respondents Jeff Burton and Shirley Stanley, individuals doing business as Backyard Safari, when they failed to appear, 68 Agric. Dec. 819 (2009), http://www.dm.usda.gov/oaljdecisions/files/091116_AWA_05-0026_do.pdf .

Mixed Findings of Fact and Conclusions

9. Violations during February 1, 2003 through June 15, 2005, are the ones Le Anne Smith is alleged to have committed. Perry's Wilderness Ranch and Zoo, Inc. ("the corporation") was the Animal Welfare Act licensee, and Craig A. Perry ("Craig Perry") was the licensee's agent. Craig Perry was the sole director and the sole officer of the corporation. Tr. 2691. Le Anne Smith was not married to Craig Perry (Tr. 2029), although she was occasionally referred to as his fiancé. Dr. Bellin at times referred to Le Anne Smith as Craig Perry's wife, but she was not. Dr. Bellin at times referred to Le Anne Smith as Craig Perry's "significant other," which I regard as accurate. Le Anne Smith and Craig Perry lived together with their 4 children in Iowa (Tr. 2029-30), near the zoo. Craig Perry supported Le Anne Smith and their 4 children.

10. For his acts, omissions and failures under the Animal Welfare Act, Craig Perry is liable, and while acting for the corporation Craig Perry subjects the corporation to liability, in addition to himself, pursuant to section 2139 of the Animal Welfare Act (entitled "Principal-agent relationship established"). 7 U.S.C. § 2139.

11. Le Anne Smith was not named on the Animal Welfare Act license applications or renewals as "authorized to conduct business" or in any other capacity. CX 1. Le Anne Smith had no authority and no responsibility regarding Craig Perry's or the corporation's Animal Welfare Act undertakings. Le Anne Smith was not a shareholder, officer, director, or employee of the corporation. Le Anne Smith was not an employee of Craig Perry. Le Anne Smith did not own the animals. Le Anne Smith was not an owner, lessor, or lessee of the real property or personal property required by the zoo or the animals. Le Anne Smith did some shopping, as requested by Craig Perry, for supplies that were used for the zoo or the animals exhibited. Le Anne Smith paid some bills, as requested by Craig Perry; signed some checks, as requested by Craig Perry, for the zoo or the animals exhibited. *See* Respondents' Brief filed January 20, 2011 (2011 Respondents' Br.), at 2-6 of 41.

12. Le Anne Smith cooperated with Dr. Bellin, APHIS's primary inspector, when he asked to inspect the animals and records, and she was the only person available; she cooperated when Dr. Bellin asked her to

receive a copy of his inspection report and to sign, acknowledging receipt. RXt-41. If there were any "titles" given to Le Anne Smith on the signature line which merely acknowledged receipt, such "titles" were chosen by Dr. Bellin to satisfy his requirements; they were not bestowed by Craig Perry or the corporation; they were not chosen by Le Anne Smith.

13. HANDLING VIOLATION ALLEGATIONS NOT PROVED AS TO LE ANNE SMITH: 9 C.F.R. § 2.131(b)(1) [formerly § 2.131(a)(1)], 9 C.F.R. § 2.131(c)(1) [formerly § 2.131(b)(1)], 9 C.F.R. § 2.131(c)(3) [formerly § 2.131(b)(3)], 9 C.F.R. § 2.131(d)(1) [formerly § 2.131(c)(1)]. I begin by addressing paragraphs 27, 29, 30 and 33 through 35 of the Complaint. Le Anne Smith is named in each of them. Each of them was proved in the Decision regarding Craig Perry and the corporation.

(a) NOT PROVED. Addressing the most recent handling violation first, I begin with paragraph 35 of the Complaint, in Loveland, Colorado, 2004 December 27, Thunder Mountain Harley Davidson Dealership. Le Anne Smith had nothing to do with the use as a backdrop of the double-sided fireplace. NOT PROVED.

(b) NOT PROVED. Next, I address paragraphs 33 and 34 of the Complaint, in Grayslake, Illinois, 2004 August 1, Lake County Fair. Le Anne Smith was not at the Lake County Fair, and she remembered that she wasn't because she had just had a baby at the time of the fair. Tr. 2076-77. Le Anne Smith had nothing to do with the lion cub that was unrestrained and climbed up John Bogdala's torso and bit him on the shoulder. Erich Cook, the handler who was in charge of cub care for the photo opportunities at the Lake County Fair, testified about Le Anne Smith. Tr. 1871-73.

BY MR. THORSON:
Q Did Le Anne Smith have anything to do with the business?
MS. CARROLL: Objection. Foundation.
JUDGE CLIFTON: I'm going to allow the witness to answer that yes, no, or I don't know. If the answer is either yes or no, then I'll ask for how he knows.
So you may answer.

THE WITNESS: The whole time I volunteered for Craig I never saw Le Anne Smith have anything to do with the animals or the business. The lady is raising four kids. They are good kids but they're all young and they're a handful. I'm a parent myself. I don't think she had the time to do anything with the business. My experience I would say no.
JUDGE CLIFTON: And you may follow-up to add to this foundation if you wish but he covered it pretty well.
MR. THORSON: I think he did.
BY MR. THORSON:
Q As far as doing the chores outside, it was you or other volunteers that did the chores. Correct?
A Yes, sir.
Q I would assume she didn't drag her young kids into the area where the carnivores were. Correct?
A No. Absolutely no.
Tr. 1871-73.
NOT PROVED.

(c) NOT PROVED. Next, I address paragraphs 27, 29, and 30 of the Complaint, primarily in Thornton, Colorado, 2003 February 19-22, American Furniture Warehouse.

On February 19, 2003, Le Anne Smith was home (in Iowa) when Timothy Carper arrived. Timothy Carper, when testifying, was able to identify Le Anne Smith, pointing her out in the hearing room, as the person to whom he delivered the tiger cubs, carrier, paperwork, and formula that Jeff Burton had sent with him. When Timothy Carper testified, he minimized his responsibility in the transfer. Not until Craig Perry testified, did I realize that the transfer of the 3 tiger cubs from Jeff Burton to Craig Perry was all Timothy Carper's idea. Craig Perry arrived home soon, so Le Anne Smith was not required to do anything with the 3 tiger cubs on February 19, 2003, except take them inside. She did not take them out of their carrier. Tr. 2039-41. After the 3 tiger cubs died in Thornton, Colorado on February 22, 2003, Le Anne Smith drove to Lincoln, Nebraska, as requested by Craig Perry, to pick up their frozen bodies to transport them for necropsy, as arranged by Dr. James Slattery in Iowa. Those two encounters with the 3 tiger cubs were Le Anne Smith's only involvement with them. Le Anne Smith had nothing to do with the

exhibiting of the 3 tiger cubs in Thornton Colorado on February 21, 2003. NOT PROVED.

14. ADDITIONAL HANDLING VIOLATION ALLEGATIONS NOT PROVED AS TO LE ANNE SMITH: 9 C.F.R. § 2.131(b)(1) [formerly § 2.131(a)(1)] and 9 C.F.R. § 2.131(c)(1) [formerly § 2.131(b)(1)]. This paragraph recounts alleged handling violations, found in paragraphs 24, 25, 31 and 32 of the Complaint, that were not proved in the Decision regarding Craig Perry and the corporation. Le Anne Smith is named in each of the paragraphs.

(a) NOT PROVED. Addressing the most recent handling violations first, I begin with paragraph 32 of the Complaint, in Tucson, Arizona, 2003, April 21, Pima County Fair. See Respondents' Brief filed January 20, 2011 (2011 Respondents' Br.), at 21 of 41. Le Anne Smith had nothing to do with this event. NOT PROVED.

(b) NOT PROVED. Next, I address paragraph 31 of the Complaint, regarding transporting 2 tiger cubs from Jackson, Minnesota to Colorado, 2003 February 25-26, donated from Vogel's Exotics. Le Anne Smith had nothing to do with transporting these tiger cubs. Further, what is cited, is 9 C.F.R. § 2.131(b)(1) [formerly § 2.131(a)(1)] (perhaps intended to address these 2 tiger cubs a couple of months later in Tucson, Arizona, 2003, April 21, Pima County Fair), which was NOT PROVED.

(c) NOT PROVED. Next, I address paragraph 25 of the Complaint, from Dr. Bellin's visit to Cedar Rapids, Iowa, 2003, February 1, Cedar Rapids Sportsmen's Show. The evidence (CX 20 and Tr. 562-78) shows that Dr. Bellin anticipated that something might go wrong in the photo opportunities. Dr. Bellin's inspection was prior to exhibition; Dr. Bellin insisted Craig Perry get leashes and collars. Dr. Bellin also has concerns about disease transmission (from young tigers and lions to humans; and from humans to young tigers and lions). Dr. Bellin does not believe that members of the public can touch young tigers and lions safely. Although Dr. Bellin cannot envision any safe photo opportunity where the members of the public can touch young tigers and lions, Dr. Bellin never saw any violation, nor was he aware of any violation having occurred. Le Anne Smith was not present at the Cedar Rapids Sportsmen's Show exhibit at

any time, and her name is not mentioned in the report. Tr. 2303-05. Le Anne Smith had nothing to do with the exhibiting in the Cedar Rapids Sportsmen's Show. NOT PROVED.

(d) NOT PROVED. Next, I address paragraph 24 of the Complaint. One lion cub, Shelby, had ringworm, which is contagious. What is not proved, is exhibition to the public of an animal with ringworm. Le Anne Smith had nothing to do with the handling specified in paragraph 24 of Shelby or any other of the animals. NOT PROVED.

15. VETERINARY CARE VIOLATION ALLEGATIONS NOT PROVED AS TO LE ANNE SMITH: 9 C.F.R. § 2.40(a), 9 C.F.R. § 2.40(a)(1) and 9 C.F.R. § 2.40(b)(2). I address paragraphs 14 through 18 of the Complaint. Le Anne Smith is named in each of them. Each of them was proved in the Decision regarding Craig Perry and the corporation, at least in part.

(a) NOT PROVED. I address paragraph 18 of the Complaint, regarding transporting 2 tiger cubs from Jackson, Minnesota to Colorado, 2003 February 25-26, donated from Vogel's Exotics. Le Anne Smith had nothing to do with transporting these tiger cubs. NOT PROVED.

(b) NOT PROVED. Next I consider paragraphs 14, 15 and 17 of the Complaint, regarding primarily Thornton, Colorado, 2003 February 19-27. After the 3 tiger cubs died in Thornton, Colorado on February 22, 2003, Le Anne Smith drove to Lincoln, Nebraska, as requested by Craig Perry, to pick up their frozen bodies to transport them for necropsy, as arranged by Dr. James Slattery in Iowa. Le Anne Smith had nothing to do with the veterinary care or the Program of Veterinary Care, nor could she have, regarding the 3 tiger cubs donated by Jeff Burton and the 2 tiger cubs donated by Vogel's Exotics. NOT PROVED.

(c) NOT PROVED. 9 C.F.R. § 2.40(b)(2). Now I consider paragraph 16 of the Complaint, regarding the "home base" in Iowa, 2003 February 27, through March 10. Dr. Burden had inspected on February 27, 2003 and dated his report March 10, 2003. CX 22. Dr. Burden examined the Program of Veterinary Care, specifically the emergency care plan. CX 22. Regarding CX 21, there was an emergency care plan; but there was a separate space for another emergency care plan for exotic

animals, which had been left blank. The noncompliance was, that the blank needed immediate completion. CX 22. Le Anne Smith had nothing to do with the Program of Veterinary Care. NOT PROVED.

16. BOOKKEEPING VIOLATION ALLEGATIONS NOT PROVED AS TO LE ANNE SMITH. 9 C.F.R. § 2.75(b)(1). The alleged bookkeeping violations, in paragraph 19 of the Complaint, were not proved and were frustrating to deal with. I'm disappointed in APHIS that these items were written up as noncompliance items. Dr. Bellin's analysis (or that of Inspector Beard or other co-worker(s)) failed to take into account animal births at home and animal deaths and their impact on inventory. (Those are not reported on the Form 7020s.) The Record of Animals on Hand (RXt-60) was apparently not referenced adequately by Dr. Bellin or Inspector Beard or other co-workers. (Were only the Form 7020s looked at?) Disproving these alleged noncompliances has been an expensive process for Respondents to set the record straight, both in the Answer and at the hearing. Didn't someone at APHIS consider it odd that Respondents would suddenly develop so many failures in accounting for their animals? Tr. 3127. Craig Perry testified that they had thought the inventory of animals had to kept from the beginning of time (Tr. 2983); Steve (Dr. Bellin) is the one that said you don't need to do that. All you need to do is keep the ones that you have on hand for that. Okay. Tr. 2983. (Dr. Bellin) also told us that we only needed to keep the 7020 forms for one year. So we started disposing of them after one year. Tr. 2983.

Mr. Thorson did an excellent job of walking us through the Record of Animals on Hand (RXt-60) and other documents to deal with the allegations, animal by animal. Tr. 3090-3127. No bookkeeping violations were proved. RXt-50 shows disposition (sale) on October 18, 2003 of 2 African lions (6-week old), 1 Zebra (gelding, 4 years old), and 1 ZeDonk (male, 3 years old). Tr. 3040-42. Thus, the allegations in paragraph 19. ii. and 19. iii. are nullified. RXt-51 shows that Dr. Slattery euthanized Bobby, a 17 year old bobcat, on October 13, 2003. Tr. 3043-44. RXt-60, p. 6. Thus, the allegations in paragraph 19. x. and 19. xi. regarding the bobcat are nullified. RXt-52 shows disposition (donation) on June 11, 2003, of 1 Zorse (2-1/2 months), 1 camel (born 5-4-03), and 1 tiger (born 11-21-03). Tr. 3047-58. RXt-60, Tr.

3098-3101. Thus, the allegations in paragraph 19. iv., vii. (except the birthdate is obviously mistaken, and see RXt-60, page 5, which shows 2 tigers born at home, and the date 11/21/03 has been corrected to 11/21/02. Tr. 3108) are nullified. RXt-60, p. 5, shows disposition of multiple reindeer on January 25, 2004. Thus, the allegations in paragraph 19. i. are nullified. RXt-60, page 4 shows 2 aoudads died in April 2003 (one died in shipping, and one from injuries from being laid on). Thus, the allegations in paragraph 19. v. are nullified. RXt-60, page 4, shows another aoudad, male, bought 11-03, got rammed and died. Thus, the allegations in paragraph 19. vi. are nullified. Regarding the 2 tigers born at home 11/21/02 (RXt-60, page 5), one, the female, died on her birthdate, 11/21/02, when she got laid on; and the other, Popeye, went to Amarillo Wildlife on 06/11/03. RXt-60, p. 5. Tr. 3109. RXt-60, page 1, shows 2 tigers that were at Craig Perry's premises in February 2005. Then, RXt-60, page 3, shows Sasha and Pasha, born at home on April 4, 2002; and 3 tigers born at home on May 5, 2003. Counting the tigers on hand, all are accounted for. Tr. 3110-16. Thus, the allegations in paragraph 19. viii. are nullified. CX 35, p. 2 shows 3 eland purchased on April 11, 2003. That corresponds with the 3 eland shown on RXt-60, page 6. Tr. 3120-21. One of the eland died, was found dead in the trailer after having been brought home. Tr. 3118. Thus, the allegations in paragraph 19. ix. are nullified.
Tr. 3090-3127.

I am unhappy that these noncompliances were alleged (CX 59), in part because Dr. Bellin had instructed Le Anne Smith to rewrite and consolidate Craig Perry's animal inventory lists; Dr. Bellin had also instructed Le Anne Smith that the Form 7020 did not need to be kept for over a year. The following excerpt of Le Anne Smith's testimony (on direct examination) is instructive (she calls Dr. Bellin "Steve"). Tr. 2052-55.

A Yes, during -- during an inspection with Dr. Bellin, he had asked me to convert Craig's ongoing inventory over the years down to what was presently there because he was going through 20 pages where he felt that was an inconvenience. So, he asked me to convert it all down there. So, I did that for him.
(Whereupon, the document was marked as RXT-60 for identification.)
BY MR. THORSON:

Q Was the original inventory, this 20 pages -- was it 20 pages at least or more?
A At least.
Q Was this in your handwriting or Craig Perry's handwriting?
A Craig's. As far as I know, that inventory took him clear back probably to when he started, but it was a lot of papers for Steve to go through and Steve just asked me to simply convert it down to what there was presently.
Q Was he sitting there while you did that?
A I believe -- yes, I believe I was -- I think I did get through the whole thing while he was there.
Q So, Dr. Bellin saw this inventory at some point in time. Do you remember exactly when that was or approximate date that you would have done this?
A If -- if I can remember right, I believe it was the inspection prior to -- is it the February '05 inspection possibly? The one with Mr. Beard.
Q You can look at the Government exhibits. CX-59 and 60 I believe are the last.
A Um-hum. Yes, I believe that I did this the prior inspection to the February 5th or 15th, '05 inspection.
Q And when you say the 15th, that's the date at the bottom of the page or the top of the page?
A Oh, the bottom. I guess it would be February 8, '05.
Q All right. And as far as the inventory itself goes, you copied this from other paperwork. Is that correct?
A Yes, I did.
Q Does that explain why the dates are different on it and they go from '95 to 2005 for instance?
A Well, yes, I just -- I just went through the old inventory and it's probably not in order. I just went through the pages and what was still present, I put on this one.
Q Now, did Dr. Bellin ever tell you it had to be in order or did he tell you what order it had to be in?
A No, he told me he just wanted a condensed version so he didn't have to shuffle through so many papers.
Q Did Dr. Bellin tell you or Mr. Perry whether or not Form 7020 had to be kept for a certain period of time?

A I believe he had told me that they did not need to be kept for over a year because I would hand him the whole folder. He didn't like shuffling through all of those papers either. So, I believe he had told me that.
Tr. 2052-55.

I conclude that Dr. Bellin's instructions, which I find interfered with Craig Perry's and the corporation's bookkeeping, are additional reasons to find that no record-keeping violations were proved. Furthermore, the bookkeeping was not Le Anne Smith's responsibility. NOT PROVED.

17.FAILURE TO ALLOW INSPECTION ALLEGATION NOT PROVED AS TO LE ANNE SMITH. 7 U.S.C. § 2146(a). 9 C.F.R. § 2.126(a). Paragraph 20 of the Complaint was not proved in the Decision regarding Craig Perry and the corporation. Le Anne Smith is named in paragraph 20. Craig Perry did not refuse inspection (as Dr. Bellin writes in CX 58), and Le Anne Smith was not asked to assist the inspectors to inspect the animals and records. NOT PROVED.
18.NONCOMPLIANCE WITH STANDARDS ALLEGATIONS NOT PROVED AS TO LE ANNE SMITH: 9 C.F.R. § 2.100(a) (including a number of standards). This paragraph recounts alleged noncompliances with standards found in paragraph 36 of the Complaint. Le Anne Smith is named in ones listed here, each of which was proved, at least in part, in the Decision regarding Craig Perry and the corporation.
36.i. Le Anne Smith had no responsibility and was not authorized to write a feeding protocol for young tiger cubs.
36.j. and 36.p. Le Anne Smith had no responsibility and was not authorized to remove animal waste, food waste, and ice and snow (from the ice and snow, the low was 17° having fallen from a high of 51° 4 days earlier, RXt-53, p. 13) (in 2005, CX 59).
36.k. Le Anne Smith had no responsibility and was not authorized to repair the camel's wall (in 2005, CX 59).
36.l. Le Anne Smith had no responsibility and was not authorized to repair the lion's shade tarps (in 2005, CX 59).
36.m. Le Anne Smith had no responsibility and was not authorized to repair the wolves' shade tarps (in 2005, CX 59).
36.n. Le Anne Smith had no responsibility and was not authorized to store the packages of meat (in 2005, CX 59).

36.o. Le Anne Smith had no responsibility and was not authorized to decide the diet for any of the animals, not the large felids, not the primates, not any of the animals (in 2005, CX 59).
36.p. See 36.j., where the waste is adequately addressed.
36.q. Le Anne Smith had no responsibility and was not authorized to remove from the large felids' enclosure any of the food remains (uneaten portions of a calf) (in 2005, CX 60).
36.r. Le Anne Smith had no responsibility and was not authorized to eliminate standing water (in 2005, CX 60).
19. NONCOMPLIANCE WITH STANDARDS ALLEGATIONS NOT PROVED AS TO LE ANNE SMITH: 9 C.F.R. § 2.100(a) (including a number of standards). This paragraph recounts an alleged noncompliance with standards, found in paragraph 36 of the Complaint, that was not proved in the Decision regarding Craig Perry and the corporation. Le Anne Smith is named.
36.s. No violation of 9 C.F.R. § 3.129(a) was cited (CX 60) and none proved. Le Anne Smith had no responsibility and was not authorized to decide the diet for any of the animals, not the large felids, not the primates, not any of the animals. NOT PROVED.
20. Was Le Anne Smith an agent of the corporation? of Craig Perry? I suppose one could argue that she was, a sort of an agent, in that she was authorized to run the errands she ran (for the corporation, for Craig Perry), to make the purchases she did (for the corporation, for Craig Perry), to do the clerical work she did (for the corporation, for Craig Perry), and to give Dr. Bellin access to inspect the animals and records when she was the only person available (for the corporation, for Craig Perry). Does that somehow subject her to being treated as if a licensee under the Animal Welfare Act?
21. Under that theory, other "agents" went unnamed as respondents, even though they actually had something to do with the animals, for example, Erich Cook, John Phillips, Jr. and Lindsay Pierce. I would not want such workers to be named as respondents, and APHIS does not typically name the workers as respondents. Le Anne Smith had no acts, omissions or failures under the Animal Welfare Act. 7 U.S.C. § 2139. So why was Le Anne Smith named as a respondent? If APHIS's theory is that Le Anne Smith is somehow a partner in the business, APHIS failed to prove such theory. APHIS argues that Le Ann Smith was essential to the

operation of the business. APHIS Brief filed March 31, 2011 (2011 APHIS Br.) at 4 of 19. APHIS failed to prove such theory.

22. Le Anne Smith testified about what Dr. Bellin had told her. (Dr. Bellin had been Craig Perry's APHIS inspector for 18 years by the time of the hearing). I find Le Anne Smith's testimony about what Dr. Bellin had told her entirely credible. Le Anne Smith was an extremely credible witness. Tr. 2686-90.

BY MR. THORSON:

Q Did Dr. Bellin ever have any comments to you about this particular case we're involved in today?

A Yes, he did.

Q What did he say about this particular case?

A Craig made somebody really mad at the top.

Q Did he indicate that there was a situation where somebody was out to get either you or Craig?

MS. CARROLL: Objection again to leading.

JUDGE CLIFTON: Yes, what I want to know is what this witness remembers about what Dr. Bellin said.

So, to the extent you can really recall what he said, even if it's not verbatim, you may tell me.

THE WITNESS: Mr. Bellin -- I asked why in the world I would be involved and Mr. Bellin said he did not know, that he figured that eventually I would be. He expressed how somebody really is after Craig. Wants Craig's license, I believe is what he said. He had told me that he thinks at times Craig may have gotten too big, traveled too much, or some of that sort, and they did not like that. He got there one time and he said, "Oh, boy, he really made somebody mad."

JUDGE CLIFTON: I'd like to go back, Ms. Smith, to the beginning of what you just relayed to me about when Dr. Bellin was commenting in response to why you were involved. You asked why you were involved, and what did Dr. Bellin say about that?

THE WITNESS: He told me that he did not know because -- he did not know. I think his direct quote was, "I don't know, but it doesn't surprise me. They're really after Craig's license." And I just -- I think the conversation continued on as far as, you know, I of course was unhappy about this and I didn't understand why because this is not my deal, it's his. And Mr. Bellin said, "I know. You've always made that very, very clear. And I know that, but they really want Craig's license." Which is what I recall. I -- I know I was pretty concerned and upset at that discussion.

BY MR. THORSON:
Q Did Dr. Bellin ever mention anything with regard to any documentation concerning this case?
A As far as the complaint, or -- or -- I'm not -- I'm not understanding.
Q Well, it's just a general question. Again, did he say anything about any documentation that you've seen concerning this case, or anything about any documentation about this case?
A Oh, well, in his comments about they -- they're really after -- out to get Craig, or Craig really made them mad. And he's made several comments. But in regards to all of that, yes, I believe that's what he was referring to, is his communications.
Q Is there anything else you can remember that he told you about documentation concerning the case?
A As far as documentations, other than -- I -- I -- I don't -- I'm -- that's so vague. I don't know.
Q Well, let me ask it a little more specifically. Did he say anything about internal documentation concerning the case?
A Did -- in a -- yes, I believe that's what he was referring to is -- is his communications back and forth -- is when he was telling me how, God, they wanted Craig's license. He -- he didn't show anything to me.
Tr. 2686-90.

ORDER

23. APHIS's requests for relief from Le Anne Smith are DENIED.

Finality

24. This Decision and Order shall be final and effective without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see Appendix A). Copies of this Decision shall be served by the Hearing Clerk upon each of the parties, and separate copies shall be served upon Craig Perry and the corporation (also addressed to Mr. Thorson).

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ANIMAL WELFARE ACT

In re: JEFFERY[1] W. ASH, d/b/a ASHVILLE GAME FARM.
Docket No. 11-0380.
Decision and Order.
Filed April 3, 2012.

AWA—Summary judgment.

Colleen A. Carroll, Esq. for APHIS.
Respondent, pro se.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER GRANTING SUMMARY JUDGMENT

I. Introduction

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes ("the Rules"), set forth at 7 C.F.R. subpart H, apply to the adjudication of the instant matter. The case was initiated upon the issuance of an Order by the Administrator of the Animal Plant Health Inspection Service ("APHIS"), an agency of the United States Department of Agriculture ("USDA"), directing Jeffery W. Ash, an individual d/b/a Ashville Game Farm ("Respondent"), to show cause why his exhibitor's license under the Animal Welfare Act, 7 U.S.C. §§2131 et seq. ("AWA" or "the Act") should not be revoked.

The AWA vests USDA-APHIS with the authority to regulate the transportation, purchase, sale, housing, care, handling and treatment of animals subject to the Act. Pursuant to the AWA, persons who sell and transport regulated animals, or who use animals for research or exhibition, must obtain a license or registration issued by the Secretary of the USDA. 7 U.S.C. §2133. Further, the Act authorizes USDA to promulgate appropriate regulations, rules, and orders to promote the purposes of the AWA. 7. U.S.C. §2151. The Act and regulations fall within the enforcement authority of APHIS, which is also tasked to issue and renew licenses under the AWA.

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[1] Respondent's first name is variably spelled throughout pleadings and documents as "Jeffery" and as "Jeffrey". In this Decision and Order, I shall strive to use the spelling associated with the pleading or documentary evidence

This matter is ripe for adjudication, and this Decision and Order[2] is based upon the pleadings, documentary evidence, and arguments of the parties, as I have determined that summary judgment is an appropriate method for disposition of this case.

II. Issue

The primary issue in controversy is whether, considering the record, summary judgment may be entered and Respondent's AWA license be revoked.

III. Contentions of the Parties

USDA contends that Respondent Jeffrey Ash is unfit for licensure under the AWA due to his conviction for the misdemeanor of reckless endangerment, second degree in relation with his exhibition of wild and exotic animals.

Respondent maintains that his conviction was not related to the treatment, transportation, care or welfare of the animals he exhibited, and therefore, does not meet the requisite criteria for denying his license under 9 C.F.R. § 2.11. Respondent argues that denial of a license is appropriate only in instances of willful violation of the Act, and maintains that he should be permitted to negotiate a settlement with USDA. Respondent asserts that the question of whether he is fit to be licensed should be determined only after a hearing, and urges denial of USDA's motion for summary judgment.

IV. Procedural History

On August 31, 2011, USDA APHIS filed with the Hearing Clerk for the Office of Administrative Law Judges ("OALJ"; "Hearing Clerk") an Order to Show Cause Why Respondent's Animal Welfare Act License should not be terminated. On September 20, 2011, counsel for Respondent entered notice of appearance and filed a Response with the

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[2] In this Decision and Order, documents submitted by Complainant shall be denoted as "CX-#" and documents submitted by Respondent shall be denoted as "RX-#".

Hearing Clerk. A hearing was scheduled to commence on March 27, 2012. On March 6, 2012, Complainant moved for the entry of summary judgment. On March 26, 2011, Respondent filed an objection to the motion.

V. Summary of the Evidence[3]

Admissions

In his Response to APHIS' Order to Show Cause filed on August 31, 2011, Respondent admitted that he operated as an exhibitor as defined by the Act and Regulations, and held Animal Welfare Act license number 21-C-0359 as an individual. Respondent further admitted that on April 29, 2011, he was convicted of reckless endangerment, second degree in Washington County, New York.

Documentary Evidence

Respondent's AWA license records and renewal application
Indictment[4]

Uniform Sentence and Commitment Form, Superior Court Case # I-192-2010, Washington County, State of New York, dated April 29, 2011.

Orders and Conditions of Adult Probation

Notice of Denial of Applications for License Renewals, New York State Department of Environmental Conservation dated June 29, 2011.

Declaration of Elizabeth Goldentyer, D.V.M., APHIS Regional Director of Animal Care, Eastern Region

Declaration of Jeffery Ash

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[3] This summary judgment relies upon the pleadings and upon declarations and documentary evidence attached to the motions and objections filed by the Parties.

[4] Although I have admitted this document to the record, I give little probative weight to charges that did not result in conviction.

Affidavit of Lisa Johnson

Affidavit of Tucker C. Stanclift, Esq.

Respondent's pleadings before the Superior Court of New York, prepared by Robert M. Winn, Esq., and related Affidavit of Jeffery Ash

APHIS inspection reports, Inspection Requirements, and photographs

Website of Central Park Zoo in New York, New York[5]

Pleadings in a civil action brought against Respondent6

On-line news article from "The Post-Star" dated December 27, 20107

Letter regarding transfer of animals dated August 25, 2008

VI. Discussion

Summary judgment is proper where there exists "no genuine issue as to any material fact." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 255 (1986). An administrative law judge may enter summary judgment for either party if the pleadings, affidavits, material obtained by discovery or other materials show that there is no genuine issue as to any material fact. *Veg-Mix, Inc. v. United States Dep't of Agric.,* 832 F.2d 601, 607 (D.C. Cir. 1987) (affirming the Secretary of Agriculture's use of summary judgment under the Rules and rejecting Veg-Mix, Inc.'s claim that a hearing was required because it answered the complaint with a denial of the allegations).

An issue is "genuine" if sufficient evidence exists on each side so that a rational trier of fact could resolve the issue either way, and an issue of fact is "material" if under the substantive law it is essential to the proper

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[5] I accord no probative value to this evidence as it relates to a facility other than Respondent's.

[6] I accord no probative value to this evidence as the record fails to demonstrate that APHIS considered this information when denying Respondent's AWA license renewal.

[7] I accord no probative value to this evidence, as it constitutes hearsay.

disposition of the claim. *Alder v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998). The mere existence of some factual dispute will not defeat an otherwise properly supported motion for summary judgment because the factual dispute must be material. *Schwartz v. Brotherhood of Maintenance Way Employees*, 264 F.3d 1181, 1183 (10th Cir. 2001).

The usual and primary purpose of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses. *Celotex Corp. v. Catrett*, 477, U. S. 317, 323-34 (1986). If the moving party properly supports its motion, the burden shifts to the non-moving party, who may not rest upon the mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial. *Muck v. United States*, 3 F.3d 1378, 1380 (10th Cir. 1993). In setting forth these specific facts, the non-moving party must identify the facts by reference to affidavits, deposition transcripts, or specific exhibits. *Adler*, 144 F.3d at 671. The non-moving party cannot rest on ignorance of facts, on speculation, or on suspicion and may not escape summary judgment in the mere hope that something will turn up at trial. *Conaway v. Smith*, 853 F.2d 789, 793 (10th Cir. 1988). However, in reviewing a request for summary judgment, I must view all of the evidence in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. Ltd. v.. Zenith Radio Corp.,* 475 U.S. 574 (1986).

I find that the record establishes no material issue of genuine fact, and that summary judgment is appropriate. I reject the following arguments of Respondent for the reasons stated:

1. Whether Respondent's conduct was willful and whether he should be afforded the opportunity to settle this matter

Respondent freely admits and the record clearly establishes that Respondent entered into a guilty plea and was convicted of one count, No. Twenty-nine (29) of a twenty-nine (29) count indictment. Count Number Twenty-Nine (29) states:

> Defendant Jeffrey Ash, on or about August 10, 2010, in the Town of Greenwich, Washington County, New York, did recklessly engage in conduct which created the risk of

> serious physical injury to another person by running Ashville Game Farm and by not properly caging animals including lemurs, monkeys, bears, turtles, alligators, pigs [,] goats, deer and other animals, and by encouraging visitors to the game farm including children to feed the animals, and did not allow visitors to the Game Farm to have contact with the animals, and did not have the animals vaccinated for rabies . . . (remaining charge concerns reptiles and other animals that are not regulated by the AWA)

Respondent relies upon the regulatory implementation of the Administrative Procedures Act, 5 U.S.C §551, et seq. for the proposition that in the absence of a showing of willfulness that may result in the revocation of a license, USDA shall afford an opportunity to achieve compliance. 7 C.F.R. § 1.133(b)(3). Respondent cites[8] decisions of the Judicial Officer of USDA where willful behavior supported the revocation of an AWA license. In those decisions, the Judicial Officer found that an action is willful if an act is done with careless disregard of statutory requirement.

I find that Respondent's conviction for "recklessly engag[ing] in conduct which created the risk of serious physical injury to another person . . ." sufficiently establishes the element of willfulness required to revoke his license.

Respondent insinuates that his entry of a guilty plea that led to the conviction at issue herein was a purely economic decision. However, Respondent has not asserted that he entered into his plea in Superior Court under the standard set forth in North Carolina v. Alford, 400 U.S. 25 (1970). There is no evidence that Respondent attempted to withdraw his guilty plea or to appeal the conviction. Moreover, the prevailing regulation considers a nolo contendere plea equivalent to any other conviction. 9 C.F.R. 9 C.F.R. § 2.11 (a)(4); (a)(6).

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[8] Respondent also makes certain factual allegations that are not of record in and which I decline to entertain.

Respondent's willing entry of a guilty plea to a criminal offense is sufficient to satisfy the requisite mens rea, or intent, to commit the crime to which he pled guilty. Accordingly, I find that Respondent's conviction demonstrates sufficient mens rea to establish willfulness under the Act. I conclude that APHIS is under no obligation to engage in settlement discussions with him.

2. Whether Respondent violated a statute, rule or regulation involving the transportation, ownership, neglect, or welfare of animals

Respondent argues that APHIS improperly denied his license due to his conviction for reckless endangerment. Respondent asserts that he was not found to have violated any Federal, State, or local laws or regulations pertaining to "animal cruelty". Respondent cites in its entirety the prevailing regulation at 9 C.F.R. § 2.11, which sets forth the standards for APHIS to use to deny an initial license application, and, pursuant to 9 C.F.R. § 2.12, to revoke an existing license. 9 C.F.R. § 2.11(a) states that a license will not be issued to any applicant who:

> Has not complied with requirements of Sec. 2.1, 2.2, 2.3, 2.4 (of the Regulations) and has not paid the fees indicated in Sec. 2.6;
> Is not in compliance with any of the regulations or standards in this subchapter;
> Has had a license revoked or whose license is suspended, as set forth in Sec. 2.10;
> Has pled nolo contendere (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty within 1 year of application, or after 1 year if the Administrator determines that the circumstances render the applicant unfit to be licensed;
> Is or would be operating in violation or circumvention of any Federal, State, or local laws; or
> Has made any false or fraudulent statements or provided false or fraudulent records to the Department of other government agencies, or has pled nolo contendere (no contest) or has been found to have violated any Federal,

> State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

9 C.F.R. § 2.11.

Respondent's argument focuses on 9 C.F.R. § 2.11(a)(4), and I agree that the record is devoid of evidence that Respondent was found to be in violation of a law or regulation pertaining to animal cruelty. However, the prevailing Regulations require that an animal must be exhibited and handled so as to pose "minimal risk of harm to the animal and the public". . .9 C.F.R. § 2.131 (c)(1) (emphasis added). The uncontroverted evidence demonstrates that Respondent's exhibition of a lemur led to the animal interacting with members of the public in a manner that risked injury, as Respondent agreed when he pled guilty to reckless endangerment.

Moreover, APHIS' decision to terminate Respondent's license was not based upon allegations of animal cruelty, but rather, upon 9 C.F.R. § 2.11(a)(6). See, Order to Show Cause of August 31, 2011, ¶ 2. That regulation provides grounds for terminating an AWA license held by anyone who, in pertinent part, "has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals. . ." 9 C.F.R. § 2.11(a)(6).

The Regional Director for APHIS, who has the authority to revoke Respondent's license, has concluded that Respondent's conviction for reckless endangerment was based upon the manner in which he exhibited animals that he owned. See, Declaration of Elizabeth Goldentyer, D.V.M.¶5; 7. The New York Penal Code at §120.20 provides that "a person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct which creates a substantial risk of serious physical injury to another person." Accordingly, an action involving the transportation, ownership, neglect, or welfare of animals is not an element of the crime of reckless endangerment. However, in the instant circumstances, Respondent's ownership and exhibition of animals

exposed the public to risk in violation of prevailing regulations. In addition, Respondent's exhibition of animals was extrinsically related to the execution of the crime of reckless endangerment, so as to constitute the instrumentality of the crime. This conclusion is supported by the New York State Department of Environmental Conservation, which denied Respondent's application to renew his state license to own and exhibit animals in part because of his conviction. CX-3.

Therefore, I find that Respondent's conviction involved the ownership and exhibition of animals. As this is a conclusion of law, and not a finding of fact, I find that summary judgment is appropriate. The record establishes that APHIS has established sufficient grounds to terminate Respondent's AWA license pursuant to 9 C.F.R. § 2.11(a)(6).

3. Respondent's entitlement to a hearing on the question of fitness to hold an AWA license

Respondent asserts that genuine issues of material fact exist regarding his fitness to hold a license, and therefore, summary judgment is an inappropriate vehicle for the disposition of the instant matter. 9 C.F.R. § 2.12 provides that "[a] license may be terminated during the license renewal process or at any other time for any reason that an initial license application may be denied pursuant to § 2.11 after a hearing in accordance with the applicable rules of practice." 9 C.F.R. § 2.12.

It is well-established that summary judgment is appropriate where there is no factual dispute. In the instant circumstances there remains no genuine issue of material fact. The Regional Director for APHIS, who has the authority to revoke Respondent's license, concluded on the basis of Respondent's conviction that he is unfit to hold a license under the Act. See, Declaration of Dr. Goldentyer, ¶¶ 6; 7. Although it is clear that Dr. Goldentyer reviewed the State of New York's denial of the renewal of Respondent's State license to possess and exhibit animals, there is no evidence that she relied upon anything other than Respondent's conviction for her determination that he is unfit to hold a license under the AWA. Id. Dr. Goldentyer did not refer to any other of the grounds cited by the State of New York for the denial of Respondent's State license. Declaration of Dr. Goldentyer, ¶ 7.

There is no evidence that APHIS looked beyond the prima facie conclusion of the State of New York's Department of Environmental Conservation. I accord substantial weight to Dr. Goldentyer's determination. The recommendations of administrative officials charged with responsibility for enforcing the Act are highly relevant and are entitled to great weight, considering the experience gained by administrative officials during their day-to-day supervision of regulated industry. See, In re: Judie Hansen, 57 Agric. Dec. 1072 (1998). I find it significant that the State of New York also considered the fact of Respondent's conviction when deciding to revoke his State license, as that determination supports APHIS' conclusion.

Because the record fails to establish that APHIS considered any factors other than Respondent's conviction when determining his fitness to be licensed, there is no genuine issue of material fact. Summary judgment in favor of Respondent is appropriate.

VII. Findings of Fact

1. Respondent Jeffrey Ash is an individual who did business as Ashville Game Farm, and who operated as an exhibitor as defined by the Act and Regulations, and whose mailing address is in Greenwich, New York. Animal Welfare Act license number 21-C-0359 was issued to Respondent as an individual in March, 2010.

2. Respondent Jeffrey Ash, on or about April 29, 2011, was convicted of reckless endangerment, second degree, pertaining to his August 10, 2010, exhibition of animals in the Town of Greenwich, Washington County, New York.

3. Respondent was convicted on one charge of a twenty-nine (29) charge indictment on April 29, 2011.

4. The State of New York revoked Respondent's State license to exhibit animals in part due to his conviction.

5. On or about December 28, 2010, APHIS Regional Director, Animal Care, Eastern Region, Elizabeth Goldentyer, D.V.M. was notified by a

member of her staff that Respondent had been indicted on twenty-nine (29) counts of alleged criminal conduct related to his exhibition of animals at his facility in Greenwich, New York.

6. Upon the subsequent request by APHIS, on July 27, 2011 Dr. Goldentyer was provided with certified copies by the State of New York of Respondent's April 29, 2011 conviction for one count out of the twenty nine (29) enumerated in the indictment, namely, Count Twenty-nine (29), reckless endangerment, second degree.

7. Respondent's conviction involved the manner in which he exhibited animals at Ashville Game Farm.

8. On or about August 10, 2011, APHIS received a copy of a letter dated June 29, 2011 from the New York State Department of Environmental Conservation directed to Mr. Ash, in which the State of New York denied the renewal of his State license to possess and exhibit animals.
9. The June 29, 2011 letter relied in part upon Respondent's conviction. APHIS determined that Respondent was unfit to hold a license under the Animal Welfare Act.

10.On or about June 8, 2011, Dr. Goldentyer requested that APHIS institute administrative proceedings to terminate Respondent's Animal Welfare Act license based upon his conviction for reckless endangerment in connection with his exhibition of wild and exotic animals.

VIII. Conclusions of Law

1. The Secretary, USDA, has jurisdiction in this matter.

2. Respondent timely filed a response to USDA's Order to Show Cause Why his license under the AWA should not be terminated.

3. The material facts involved in this matter are not in dispute and the entry of summary judgment in favor of USDA is appropriate.

4. Respondent's conviction for reckless endangerment, second degree, under the Penal Code of the State of New York involved the possession and exhibition of animals.

5. Respondent's conviction establishes that his conduct was willful, within the meaning of the AWA and prevailing regulations.

6. APHIS concluded that Respondent's conviction demonstrates that he is unfit to hold a license to possess and exhibit animals under the AWA.

7. APHIS did not rely upon other factors for its determination to revoke Respondent's license.

8. APHIS' revocation of Respondent's license pursuant to 9 C.F.R. §2.11(a)(6), promotes the remedial nature of the AWA and is hereby AFFIRMED.

IX. ORDER

Respondent's Animal Welfare Act license, number 21-C-0359, is hereby revoked.

This Decision and Order shall be effective 35 days after this decision is served upon the Respondent unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145.

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In re: JESSICA ELROD.
Docket No. 12-0191.
Decision and Order.
Filed May 30, 2012.

AWA—Summary judgment.

Petitioner, pro se.
Colleen A. Carroll, Esq. for APHIS.
Decision and Order by Janice K. Bullard, Administrative Law Judge.

ANIMAL WELFARE ACT

DECISION AND ORDER GRANTING SUMMARY JUDGMENT

INTRODUCTION

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes ("the Rules"), set forth at 7 C.F.R. subpart H, apply to the adjudication of the instant matter. The case involves a petition for a hearing ("Petition") filed by pro se petitioner Jessica Elrod ("Petitioner") upon her objection to the United States Department of Agriculture's ("USDA"; "Respondent") denial of her application for an exhibitor's license under the Animal Welfare Act, 7 U.S.C. §§2131 et seq. ("AWA" or "the Act"). The AWA vests USDA with the authority to regulate the transportation, purchase, sale, housing, care, handling and treatment of animals subject to the Act.

Pursuant to the AWA, persons who sell and transport regulated animals, or who use animals for research or exhibition, must obtain a license or registration issued by the Secretary of the USDA. 7 U.S.C. §2133. Further, the Act authorizes USDA to promulgate appropriate regulations, rules, and orders to promote the purposes of the AWA. 7. U.S.C. §2151. The Act and regulations fall within the enforcement authority of the Animal Plant Health Inspection Service ("APHIS"), an agency of USDA. APHIS is the agency tasked to issue licenses under the AWA.

This matter is ripe for adjudication and this Decision and Order[1] is based upon the documentary evidence, as I have determined that summary judgment is an appropriate method for disposition of this case.

I. Issue

The primary issue in controversy is whether, considering the record, summary judgment may be entered in favor of USDA and Petitioner's request for a hearing should be dismissed.

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[1] In this Decision and Order, documents submitted by Petitioner shall be denoted as "PX-#" and documents submitted by Respondent shall be denoted as "RX-#".

II. Procedural History

On December 27, 2011, Petitioner filed with the Hearing Clerk for the Office of Administrative Law Judges (OALJ) ("Hearing Clerk") a request for a hearing regarding the November 10, 2011 denial by APHIS of her application for a license under the AWA. On January 23, 2012, Petitioner supplemented her hearing request by filing a copy of the denial of her application, which is hereby identified as "PX-1". On February 22, 2012, the matter was assigned to me. By Order issued March 9, 2012, I found that Respondent's request for a hearing was not timely filed pursuant to 7 C.F.R. §2.11(b), and concluded that the right to a hearing had been waived. I found it appropriate to issue a Decision and Order on the record, and instructed Petitioner and APHIS to submit all documentation to the record by May 11, 2012.

On April 27, 2012, counsel for APHIS moved for summary judgment and filed documentation in support of its position, identified as "RX-1 through RX-11". Petitioner did not submit any documentation in response to my Order. Petitioner did not respond to APHIS' motion within the time permitted in accordance with 7 C.F.R. §1.143(d).
All documents are hereby admitted to the record.

III. Summary of the Evidence

Petitioner was issued license number 84-C-0111 under the AWA in September, 2008, following an inspection of her facility and receipt of her license fee. RX-1. Following inspections on April 20, 2009, and on July 21, 2009, APHIS cited Petitioner with violations of controlling regulations. RX-2. Petitioner's license was nevertheless renewed in 2009 upon her payment of the applicable fee. RX-3. In May, 2010, Petitioner advised APHIS that she had changed the physical site of her exhibition business, but she failed to submit a completed license renewal form and appropriate fees. RX-4. Accordingly, Petitioner's license expired on November 11, 2010. RX-5.

In April, 2010, the Humane Society for the Pike's Peak Region conducted an investigation of Petitioner's business. RX-6. Following a second investigation started in July, 2011, fifty-seven (57) of Petitioner's

animals were confiscated and removed from her premises on October 18, 2011. RX-6. The investigating agency provided information about the investigations and photographs to APHIS, including a statement by Officer Kaiser that Petitioner had represented that she held a license under the AWA . RX-7; RX-6 at 6. The investigation also disclosed that Petitioner had sold an adult hedgehog on October 16, 2011. RX-6 at 7-8; RX-9. On an APHIS record of acquisition and disposition of animals, Form 7020, it is represented that Petitioner held a valid AWA license on that date. RX-9.

On October 19, 2011, Petitioner applied to APHIS for a new exhibitor's license. RX-8. On November 10, 2011, APHIS denied Petitioner's application for a license. PX-1. Subsequently, on March 2, 2012, Petitioner pled guilty to three counts of animal cruelty and a stipulated Order for deferred judgment and sentence were filed in the District and County Courts of El Paso County, Colorado. RX-11. A condition of the deferred judgment and sentence required Petitioner to no longer engage in the breeding of any animal, whether for profit or not, and restricted Petitioner to keeping no more than twenty-nine (29) animals of any kind. RX-11.

IV. Legal Standards

An administrative law judge may enter summary judgment for either party if the pleadings, affidavits, material obtained by discovery or other materials show that there is no genuine issue as to any material fact. *Veg-Mix, Inc. v. United States Dep't of Agric*., 832 F.2d 601, 607 (D.C. Cir. 1987) (affirming the Secretary of Agriculture's use of summary judgment under the Rules and rejecting Veg-Mix, Inc.'s claim that a hearing was required because it answered the complaint with a denial of the allegations); Federal Rule of Civil Procedure 56(c). An issue is "genuine" if sufficient evidence exists on each side so that a rational trier of fact could resolve the issue either way, and an issue of fact is "material" if under the substantive law it is essential to the proper disposition of the claim. *Alder v. Wal-Mart Stores, Inc.,* 144 F.3d 664, 670 (10th Cir. 1998). The mere existence of some factual dispute will not defeat an otherwise properly supported motion for summary judgment because the factual dispute must be material. *Schwartz v. Brotherhood of Maintenance Way Employees*, 264 F.3d 1181, 1183 (10th Cir. 2001).

The usual and primary purpose of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses. *Celotex Corp. v. Catrett,* 477, U. S. 317, 323-34 (1986). If the moving party properly supports its motion, the burden shifts to the non-moving party, who may not rest upon the mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial. *Muck v. United States,* 3 F.3d 1378, 1380 (10th Cir. 1993). In setting forth these specific facts, the non-moving party must identify the facts by reference to affidavits, deposition transcripts, or specific exhibits. *Adler*, 144 F.3d at 671. The non-moving party cannot rest on ignorance of facts, on speculation, or on suspicion and may not escape summary judgment in the mere hope that something will turn up at trial. *Conaway v. Smith,* 853 F.2d 789, 793 (10th Cir. 1988). However, in reviewing a request for summary judgment, I must view all of the evidence in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby*, 477 U.S. 262 (1986).

The AWA authorizes the Secretary of USDA to "issue licenses . . .in a manner as he may prescribe" (7 U.S.C. §2133) and to "promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of [the Act]" (7 U.S.C. §2151).

Pursuant to 9 C.F.R. §2.11(a) A license shall not be issued to any applicant who:

> (5) Is or would be operating in violation or circumvention of any federal, State or local laws; or (6) Has made any false or fraudulent statements or provided any false or fraudulent records to the department or other government agencies, or has pled *nolo contendre* (no contest) or has been found to have violated any Federal State or local laws or regulations pertaining to the transportation, ownership, neglect or welfare of animals or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

9 C.F.R. §2.11(a)(5) and (6).

Pursuant to 9 C.F.R. § 2.5, Duration of license and termination of license, an AWA license shall be valid unless "the license has expired or been terminated". 9 C.F.R. §2.5(a)(3). Further:

> Any person who is licensed must file an application for a license renewal and an annual report form. . . and pay the required annual license fee. The required annual license fee must be received in the appropriate Animal Care regional office on or before the expiration date of the license of the license will expire and automatically terminate…

9 C.F.R. §2.5(b).

V. Discussion

The report of the investigation by the Humane Society clearly establishes that Petitioner made false statements and provided fraudulent records. Petitioner did not have a valid AWA license during the pendency of the investigation in 2011, since her license had expired on November 11, 2010. Petitioner had failed to pay the appropriate license fee and had failed to submit a completed renewal form. Petitioner tacitly acknowledged that she did not have a valid AWA license by submitting an application for a new license in October, 2011. Accordingly, by asserting that she had a valid license in statements to investigating officers and on documents recording the sale of an animal, it is clear that Petitioner made false statements and the first prong of the two-part test set forth at 9 C.F.R. 2.11(a)(6) has been met.

The second part of the test is established by APHIS' conclusion that Petitioner is unfit to be licensed. PX-1. APHIS relied upon its own inspections and the confiscation of animals by local authorities in reaching that conclusion. I find that APHIS' determination that Petitioner's false statements combined with the conclusions of State investigations and APHIS inspections are sufficient to support APHIS' decision to deny Petitioner's application for a license. The rejection of Petitioner's

application was a proper exercise of USDA's authority to regulate the AWA. Summary judgment is hereby entered in favor of Respondent.

I find that the evidence regarding Petitioner's guilty plea and conditional sentence would support the future denial of a license. However, since the plea was entered months after APHIS denied her license application, the plea cannot support the instant denial. I find that the terms of Petitioner's conditional sentence, which prohibits her from breeding any animal for any purpose, and which restricts the number of animals she may "keep", would meet the standard set forth at 2.11(a)(5). However, the terms of the plea and conditional sentence post-dated APHIS' decision to deny Petitioner's application for a license, and therefore, that evidence does not support that denial. Undoubtedly, it would support a future denial of any application for a license under the AWA that Petitioner may submit.

Accordingly, the evidence regarding the entry of the guilty plea and the terms of Petitioner's sentence has little probative value to this determination and is hereby credited with no weight.

VI. Findings of Fact

1. Jessica Elrod is an individual who had a business in Colorado Springs known as "Critter Crossings". RX-1.

2. Petitioner held a valid license under the AWA, license number 84-C-0111, pursuant to an application filed in September 2008. RX-1.

3. APHIS cited Petitioner with violations of prevailing regulations upon inspections conducted in April and July, 2009. RX-2.

4. Petitioner's AWA license was renewed in 2009. RX-3.

5. In May, 2010, Petitioner filed an incomplete application to renew her AWA license and failed to pay the requisite fee, and her license expired on November 11, 2010.

6. Investigations into Petitioner's business conducted in April, 2010 and July, 2011 by the Humane Society for Pike's Peak Region resulted in the confiscation of fifty-seven (57) animals from her premises on October 18, 2011. RX-6.

7. During the course of the investigation, on or about August 1, 2011, Petitioner represented to an investigating officer that she held a valid AWA license. RX-6.

8. On an APHIS form documenting the sale of a hedgehog on October 16, 2011, Petitioner represented that she held a valid AWA license. RX-9.

9. On October 19, 2011, Petitioner applied to APHIS for a new exhibitor's license. RX-8.

10. On November 10, 2011, APHIS denied Petitioner's application for a new license.

VII. Conclusions of Law

1. The Secretary, USDA, has jurisdiction in this matter.

2. The request for a hearing was not timely filed in compliance with 9 C.F.R. §2.11(b) and 7 C.F.R. § 1.141(a).

3. The material facts involved in this matter are not in dispute and the entry of summary judgment in favor of Respondent is appropriate
Petitioner failed to meet the requirements for renewing her license, and accordingly, it expired and terminated on November 11, 2010, pursuant to 9 C.F.R. §§2.5(a)(3) and 2.5(b).

4. APHIS has established that Petitioner made false statements to an official and made fraudulent representations on documents when she asserted that she held a valid AWA license after its expiration in November, 2010.

5. APHIS has further established that Petitioner was not fit to be a licensee under the AWA, pursuant to 2.11(a)(6).

6. APHIS' denial of a license to Petitioner pursuant to 9 C.F.R. §2.11(a)(6), promotes the remedial nature of the AWA and is hereby AFFIRMED.

7. Petitioner's disqualification from applying for a license for a period of one year is appropriate.

ORDER

Petitioner is hereby disqualified from obtaining an AWA license for a period of one year, commencing on the date that this Order becomes final. This Decision and Order shall be effective 35 days after this decision is served upon the Petitioner unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145.

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

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In re: CASEY G. LUDWIG.
Docket No. 12-0156.
Decision and Order.
Filed June 26, 2012.

AWA—Summary judgment.

Colleen A. Carroll, Esq. for APHIS.
Respondent, pro se.
Decision and order by Janice K. Bullard, Administrative Law Judge.

DECISION AND ORDER GRANTING SUMMARY JUDGMENT

I. Introduction

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes ("the Rules"), set forth

at 7 C.F.R. subpart H, apply to the adjudication of the instant matter. The case involves a petition for a hearing ("Petition") filed by pro se petitioner Casey G. Ludwig ("Petitioner") upon objection to the United States Department of Agriculture's ("USDA"; "Respondent") denial of his application for an exhibitor's license under the Animal Welfare Act, 7 U.S.C. §§2131 et seq. ("AWA" or "the Act").

The AWA vests USDA with the authority to regulate the transportation, purchase, sale, housing, care, handling and treatment of animals subject to the Act. Pursuant to the AWA, persons who sell and transport regulated animals, or who use animals for research or exhibition, must obtain a license or registration issued by the Secretary of the USDA. 7 U.S.C. §2133. Further, the Act authorizes USDA to promulgate appropriate regulations, rules, and orders to promote the purposes of the AWA. 7. U.S.C. § 2151. The Act and regulations fall within the enforcement authority of the Animal Plant Health Inspection Service ("APHIS"), an agency of USDA. APHIS is the agency tasked to issue licenses under the AWA.

This matter is ripe for adjudication, and this Decision and Order[1] is based upon the documentary evidence, as I have determined that summary judgment is an appropriate method for disposition of this case.

II. Issue

The primary issue in controversy is whether, considering the record, summary judgment may be entered in favor of USDA and Petitioner's request for a hearing may be dismissed.

III. Procedural History

On December 2, 2011, Petitioner applied to APHIS for an animal exhibitor's license under the Act. Petitioner had held AWA license # 35-C-0290 until it expired on November 18, 2011. By letter dated December 15, 2011, APHIS denied Petitioner's application. On January 9, 2012, Petitioner filed with the Hearing Clerk for the Office of

[1] In this Decision and Order, documents submitted by Petitioner shall be denoted as "PX-#" and documents submitted by Respondent shall be denoted as "RX-#".

Administrative Law Judges ("OALJ") ("Hearing Clerk") a petition objecting to APHIS' denial and requested a hearing before OALJ.

By Order issued February 16, 2012, I set a schedule for the exchange and filing of evidence by the parties. On April 3, 2012, Respondent APHIS filed a motion for summary judgment, together with supporting affidavits and documentation. Subsequently, Petitioner contacted my staff, requesting that a hearing date be set. On May 31, 2012, I held a telephone conference with Petitioner and counsel for Respondent, and summarized that conversation in an Order issued on that date. I deferred ruling on Respondent's motion, pending submissions by Petitioner, and I extended the time within which Petitioner could respond to the motion. On June 21, 2012, Petitioner filed a response to Respondent's motion.

IV. Summary of the Evidence

Petitioner held an exhibitor's license as an individual doing business as Lakewood Zoo until the license expired on November 18, 2011. RX-1. A letter dated December 1, 2011, informed Petitioner that his AWA license was no longer valid because APHIS did not receive his renewal documents and applicable fees before the license expiration date. RX-1. On December 2, 2011, Petitioner applied for a new license under the AWA. RX-3., APHIS denied the license application, concluding that Petitioner was not compliant with laws enacted by the State of Wisconsin pertaining to possession and exhibition of wild animals. RX-4; Declaration of Elizabeth Goldentyer. Petitioner fell into violation with state law by failing to hold a valid state-issued Captive Wild Animal Farm License ("CWAFL") from 2008 until January 27, 2012. *Id*. In his application for an AWA license, Petitioner included species that would require the possession of a CWAFL. RX-3.

As an additional reason for denying Petitioner's application, APHIS found that Petitioner had made false statements to the Wisconsin Department of Natural Resources ("DNR") on or about May 12, 2011 when he represented that the bears in Petitioner's possession were not a species native to Wisconsin, and therefore were not subject to DNR's regulation. Petitioner further represented that he did not have any native species at his premises, despite DNR's confirmation that in addition to the

bears, raccoons, foxes, and wolves were present at Petitioner's facility. See, Declaration of Dr. Goldentyer.

Dr. Goldentyer further concluded that Petitioner's activities combined with a history of non-compliance with the AWA, demonstrated that Petitioner is unfit to be licensed. See, Declaration of Dr. Goldentyer. Petitioner was charged by the State of Wisconsin with possessing live captive wild animals without a license on September 10, 2011. RX-2 at 25. On March 13, 2009, Petitioner had entered a no contest plea on a previous charge by the State of Wisconsin of possessing live captive wild animals without a license. RX 5 at 3.

The President of the United State Zoological Association, Joe Schriebvogel, wrote a letter dated June 20, 2012 ("PX-1"), in which Mr. Schriebvogel explained that Petitioner brought to his premises Siberian Bears, which Petitioner believed were not covered by the license requirements of the AWA as they are not one of the sixteen sub-species of bears found in the United States. Mr. Schriebvogel asked that Petitioner be licensed so that the animals he keeps do not have to be relocated.

Petitioner submitted a summary of witnesses and evidence ("PX-2"), in which he offered to provide evidence that he has held a DNR license since January, 2012, and could explain the lapse of his license. He also wanted to offer evidence that the operations of his facility were being re-organized and were operating under a Board of Directors to a non-profit organization that anticipates applying for a new conditional use permit and all required licenses.

V. Discussion

An administrative law judge may enter summary judgment for either party if the pleadings, affidavits, material obtained by discovery or other materials show that there is no genuine issue as to any material fact. *Veg-Mix, Inc. v. United States Dep't of Agric.,* 832 F.2d 601, 607 (D.C. Cir. 1987) (affirming the Secretary of Agriculture's use of summary judgment under the Rules and rejecting Veg-Mix, Inc.'s claim that a hearing was required because it answered the complaint with a denial of the allegations); Federal Rule of Civil Procedure 56(c). An issue is "genuine" if sufficient evidence exists on each side so that a rational trier

of fact could resolve the issue either way, and an issue of fact is "material" if under the substantive law it is essential to the proper disposition of the claim. *Alder v. Wal-Mart Stores, Inc.,* 144 F.3d 664, 670 (10th Cir. 1998). The mere existence of some factual dispute will not defeat an otherwise properly supported motion for summary judgment because the factual dispute must be material. *Schwartz v. Brotherhood of Maintenance Way Employees*, 264 F.3d 1181, 1183 (10th Cir. 2001).

The usual and primary purpose of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses. *Celotex Corp. v. Catrett, 477*, U. S. 317, 323-34 (1986). If the moving party properly supports its motion, the burden shifts to the non-moving party, who may not rest upon the mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial. *Muck v. United States*, 3 F.3d 1378, 1380 (10th Cir. 1993). In setting forth these specific facts, the non-moving party must identify the facts by reference to affidavits, deposition transcripts, or specific exhibits. Adler, 144 F.3d at 671. The non-moving party cannot rest on ignorance of facts, on speculation, or on suspicion and may not escape summary judgment in the mere hope that something will turn up at trial. *Conaway v. Smith,* 853 F.2d 789, 793 (10th Cir. 1988). However, in reviewing a request for summary judgment, I must view all of the evidence in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby,* 477 U.S. 262 (1986).

I find that the record is sufficiently developed to conclude that entry of summary judgment in favor of Respondent is appropriate.

Pursuant to 9 C.F.R. §2.11(a) A license shall not be issued to any applicant who:

> (5) Is or would be operating in violation or circumvention of any federal, State or local laws; or (6) Has made any false or fraudulent statements or provided any false or fraudulent records to the department of other government agencies, or has pled nolo contendre (no contest) or has been found to have violated any Federal State or local laws or regulations pertaining to the transportation, ownership, neglect or

> welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

9 C.F.R. §§2.11(a)(5) and (6).

The record clearly establishes that Petitioner did not have the required State-issued license to possess some of the animals that he listed on his December 2, 2011 application to APHIS for a license under the AWA. In addition, in 2009, Petitioner pled no contest to a charge of possessing live captive wild animals without a license in October, 2008. Petitioner's violation of the State law meets the standard imposed by 9 C.F.R. §2.11(a)(5). His plea of no contest meets the standard imposed by 9 C.F.R. §2.11(a)(6).

I further find that the record is undisputed that Petitioner's repeated failure to comply with State law renders him unfit to be licensed. Petitioner's explanation that he misunderstood what was meant by the type of bears that would subject him to the jurisdiction of the Act is inconsistent with his list of animals on his license application dated December 2, 2011. However, according all benefit of the doubt to Petitioner, as required by the standards applicable to summary judgment, I find that the record fails to establish that the Petitioner made false or fraudulent statements, as contemplated by 9 C.F.R. §2.11(a)(6).

Although material facts are in dispute regarding whether Petitioner made false or fraudulent statements, the evidence of Petitioner's repeated State charges for failure to have a proper State license are sufficient to support APHIS' conclusions and the entry of summary judgment.

I find that APHIS' determination to deny Petitioner's application for a license under the AWA was a proper exercise of USDA's authority to regulate the AWA. Petitioner's contentions regarding attempts to reorganize his business on a non-profit model subject to a Board of Directors is laudable, but does not constitute a valid defense to his failure to comply with State law.

The evidence supports the disqualification of Petitioner for a period of one year, as determined by Dr. Goldentyer in her correspondence of

December 15, 2011. RX-4. Any other entity that assumes responsibility for Petitioner's animals and facility would need to meet all State licensing requirements as well as qualify for a license under the AWA to possess and exhibit animals.

Summary judgment is hereby entered in favor of Respondent. No hearing in this matter is required.

VI. Findings of Fact

1. Petitioner Casey G. Ludwig is an individual doing business as Lakewood Zoo and until November 18, 2011, held Animal Welfare Act license #35-C00290. RX-1.

2. Petitioner's license expired when he failed to timely submit an application to renew his license, together with applicable fees. RX-1. On December 2, 2011, Petitioner filed an application for a new license with APHIS. RX-3.

3. Among the animals listed as in his possession on his application, Petitioner included five bears, as well as wild/exotic canines and felines. RX-3.

4. On March 13, 2009, Petitioner entered a plea of no contest to a charge of possessing live captive wild animals without a license in the State of Wisconsin. RX-5.

5. On December 6, 2011, Petitioner was again charged by the State of Wisconsin with possessing live captive wild animal without a license. RX. 2.

6. APHIS denied Petitioner's application by letter dated December 15, 2011. RX-4.

VII. Conclusions of Law

1. The Secretary, USDA, has jurisdiction in this matter.

2. The request for a hearing was timely filed, in compliance with 9 C.F.R. §2.11(b) and 7 C.F.R. § 1.141(a).

3. The material facts regarding Petitioner's compliance with State licensing requirements are not in dispute and the entry of summary judgment in favor of Respondent is appropriate with respect to his failure to comply with State laws regarding the possession of animals.
It is not necessary to conclude that Petitioner made false or fraudulent statements, as the undisputed evidence establishes that he failed to comply with State law.

3. Petitioner's plan to reorganize his business as a non-profit entity is not material to APHIS' determination.

4. APHIS' denial of a license to Petitioner pursuant to 9 C.F.R. §§2.11(a)(5) and (6) promotes the remedial nature of the AWA and is hereby AFFIRMED.

5. Petitioner's disqualification from applying for a license is appropriate.

ORDER

Summary Judgment is entered in favor of Respondent and Petitioner's request for a hearing is hereby DISMISSED.

Petitioner is hereby disqualified from obtaining an AWA license for a period of one year, commencing on the date that this Order becomes final.

This Decision and Order shall be effective 35 days after this decision is served upon the Petitioner unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145.

EQUAL OPPORTUNITY CREDIT ACT

COURT DECISION

COREY LEA v. USDA.
Docket No. 11-3945.
Court Decision.
Filed April 10, 2012.

EOCA.

United States Court of Appeals
For the Sixth Circuit

Before Judges Siler, Sutton and Hood.

The court having received a petition for rehearing en bane, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en bane, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case.

Accordingly, the petition is denied.

HORSE PROTECTION ACT

DEPARTMENTAL DECISIONS

In re: HARVEY RODRIGUEZ AND MICHELLE HASTINGS.[1]
HPA Docket No. 11-0242.
Decision and Order.
Filed January 24, 2012.

HPA.

Robert Ertman for APHIS.
Respondent, pro se.
Initial Decision and Order by Peter M. Davenport, Chief Administrative Law Judge.
Decision and Order by William R. Jenson, Judicial Officer.

DECISION AND ORDER

PROCEDURAL HISTORY

Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on May 19, 2011. The Administrator instituted the proceeding under the Horse Protection Act of 1970, as amended (15 U.S.C. §§ 1821-1831) [hereinafter the Horse Protection Act]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151) [hereinafter the Rules of Practice].

The Administrator alleges that, on June 20, 2009: (1) Harvey Rodriguez, in violation of 15 U.S.C. § 1824(2)(B), entered for the purpose of showing or exhibiting a horse known as "Broken Dreams" as entry number 165, in class number 9, at the Eagleville Lions Club Horse Show at Eagleville, Tennessee, while the horse was sore; and (2) Michelle Hastings, in violation of 15 U.S.C. § 1824(2)(B) and (2)(D), entered and allowed the entry for the purpose of showing or exhibiting a

[1] This case was originally captioned "In re Harvey Rodriguez, and Michelle Hasting." I have amended the caption to reflect the correct spelling of Ms. Hastings' last name as indicated in Ms. Hastings' December 28, 2011, filing.

horse known as "Broken Dreams" as entry number 165, in class number 9, at the Eagleville Lions Club Horse Show at Eagleville, Tennessee, while the horse was sore (Compl. at 2 ¶ II).

On June 29, 2011, the Hearing Clerk served Ms. Hastings with the Complaint, the Rules of Practice, and the Hearing Clerk's May 20, 2011, service letter.[2] On August 5, 2011, the Hearing Clerk served Mr. Rodriguez with the Complaint, the Rules of Practice, and the Hearing Clerk's May 20, 2011, service letter.[3] Ms. Hastings and Mr. Rodriguez failed to file an answer to the Complaint within 20 days after the Hearing Clerk served them with the Complaint, as required by 7 C.F.R. § 1.136(a). The Hearing Clerk sent a letter, dated July 21, 2011, to Ms. Hastings and a letter, dated August 25, 2011, to Mr. Rodriguez informing them that their answer to the Complaint had not been filed within the time prescribed in the Rules of Practice. Ms. Hastings did not respond to the Hearing Clerk's letter dated July 21, 2011. Mr. Rodriguez did not respond to the Hearing Clerk's letter dated August 25, 2011.

On September 30, 2011, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] filed a Show Cause Order directing the parties to show cause why a default decision and order should not be entered. On October 17, 2011, the Administrator filed a timely response to the Chief ALJ's Show Cause Order contending there was no reason why a default decision and order should not be entered. Neither Ms. Hastings nor Mr. Rodriguez filed a response to the Chief ALJ's Show Cause Order. The Administrator attached to the response to the Chief ALJ's Show Cause Order a Motion for Adoption of Proposed Decision and Order and a proposed Decision and Order Upon Admission of Facts by Reason of Default. Neither Ms. Hastings nor Mr. Rodriguez filed timely objections to the Administrator's Motion for Adoption of Proposed Decision and Order or the Administrator's proposed Decision and Order Upon Admission of Facts by Reason of Default.

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[2] Domestic Return Receipt for article number 7009 1680 0001 9851 7653.

[3] Memorandum to the File, dated August 5, 2011, and signed by L. Eugene Whitfield, Hearing Clerk.

On November 18, 2011, in accordance with 7 C.F.R. § 1.139, the Chief ALJ filed a Default Decision and Order: (1) concluding that Mr. Rodriguez and Ms. Hastings violated the Horse Protection Act, as alleged in the Complaint; (2) assessing Mr. Rodriguez and Ms. Hastings each a $2,200 civil penalty; and (3) disqualifying Mr. Rodriguez and Ms. Hastings for 1 year from showing, exhibiting, or entering any horse and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction (Chief ALJ's Default Decision and Order at 2-3).

On December 28, 2011, Mr. Rodriguez and Ms. Hastings appealed the Chief ALJ's Default Decision and Order to the Judicial Officer. On January 17, 2012, the Administrator filed Complainant's Response to Appeal. On January 19, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

Based upon a careful consideration of the record, I adopt, with minor changes, the Chief ALJ's Default Decision and Order as the final agency decision and order.

DECISION

Statement of the Case

Mr. Rodriguez and Ms. Hastings failed to file an answer to the Complaint within the time prescribed in 7 C.F.R. § 1.136(a). The Rules of Practice (7 C.F.R. § 1.136(c)) provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, pursuant to 7 C.F.R. § 1.139, the failure to file a timely answer constitutes a waiver of hearing. Accordingly, the material allegations of the Complaint are adopted as findings of fact. I issue this Decision and Order pursuant to 7 C.F.R. § 1.139.

Findings of Fact

1. Harvey Rodriguez is an individual with a mailing address in Shelbyville, Tennessee.

2. Michelle Hastings is an individual with a mailing address in Shelbyville, Tennessee.

3. At all times material to this proceeding, Harvey Rodriguez was the trainer and an owner of the horse known as "Broken Dreams" entered as entry number 165, in class number 9, on June 20, 2009, at the Eagleville Lions Club Horse Show at Eagleville, Tennessee.

4. At all times material to this proceeding, Michelle Hastings was an owner of the horse known as "Broken Dreams" which was entered as entry number 165, in class number 9, on June 20, 2009, at the Eagleville Lions Club Horse Show at Eagleville, Tennessee.

5. On June 20, 2009, Harvey Rodriguez entered for the purpose of showing or exhibiting the horse known as "Broken Dreams" as entry number 165, in class number 9, at the Eagleville Lions Club Horse Show at Eagleville, Tennessee, while the horse was sore.

6. On June 20, 2009, Michelle Hastings entered and allowed the entry for the purpose of showing or exhibiting the horse known as "Broken Dreams" as entry number 165, in class number 9, at the Eagleville Lions Club Horse Show at Eagleville, Tennessee, while the horse was sore.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.

2. Harvey Rodriguez's entry of the horse known as "Broken Dreams" as entry number 165, in class number 9, at the Eagleville Lions Club Horse Show at Eagleville, Tennessee, on June 20, 2009, for the purpose of showing or exhibiting, while the horse was sore, violated 15 U.S.C. § 1824(2)(B).

3. Michelle Hastings' entering and allowing the entry of the horse known as "Broken Dreams" as entry number 165, in class number 9, at the Eagleville Lions Club Horse Show at Eagleville, Tennessee, on June 20, 2009, for the purpose of showing or exhibiting, while the horse was sore, violated 15 U.S.C. § 1824(2)(B) and (D).

Mr. Rodriguez and Ms. Hastings' Appeal Petition

Mr. Rodriguez and Ms. Hastings raise three issues in their letter to the Office of Administrative Law Judges dated December 14, 2011, and filed with the Hearing Clerk on December 28, 2011 [hereinafter Appeal Petition]. First, Mr. Rodriguez and Ms. Hastings assert they previously addressed the allegations in the Complaint in letters dated July 25, 2011, and November 14, 2011. Mr. Rodriguez and Ms. Hastings surmise that the appropriate person did not receive these letters. (Appeal Pet. at 1.) The record transmitted by the Hearing Clerk to the Office of the Judicial Officer does not include any letter dated July 25, 2011, or November 14, 2011, from Mr. Rodriguez and Ms. Hastings. The first and only filing by Mr. Rodriguez and Ms. Hastings in the record is their Appeal Petition dated December 14, 2011, and filed December 28, 2011. The Complaint, the Rules of Practice, and the Hearing Clerk's letter dated May 20, 2011, all of which the Hearing Clerk served on Ms. Hastings on June 29, 2011,[4] and on Mr. Rodriguez on August 5, 2011,[5] state the response to the Complaint must be filed with the Hearing Clerk. I have consistently held that delivery to a person other than the Hearing Clerk does not constitute filing with the Hearing Clerk.[6] Therefore, if, as Mr. Rodriguez and Ms.

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[4] See note 1.

[5] See note 2.

[6] *See In re* Carolyn & Julie Arends, __ Agric. Dec. ___, slip op. at 16-17 (Nov. 15, 2011) (stating the Administrator's counsel's receipt of the respondents' response to an Order to Show Cause does not equate to the respondents' filing their response to the Order to Show Cause with the Hearing Clerk); *In re Heartland Kennels, Inc.,* 61 Agric. Dec. 492, 537 (2002) (stating an incarcerated pro se respondent's delivery of a document to prison authorities for forwarding to the Hearing Clerk does not constitute filing with the Hearing Clerk); *In re Jack Stepp* (Ruling Denying Respondents' Pet. for Recons. of Order Lifting Stay), 59 Agric. Dec. 265, 268 (2000) (stating neither respondents' mailing the Reply to Motion to Lift Stay nor the United States Postal Service's delivering the Reply to Motion to Lift Stay to the United States Department of Agriculture, Mail & Reproduction Management Division, constitutes filing with the Hearing Clerk); *In re Sweck's, Inc.*, 58 Agric. Dec. 212, 213 n.1 (1999) (stating appeal petitions must be filed with the Hearing Clerk; indicating that the hearing officer erred when he instructed litigants that appeal petitions must be filed with Judicial Officer); *In re Severin Peterson* (Order Denying Late Appeal), 57 Agric. Dec. 1304, 1310 n.3 (1998) (stating that neither the applicants' mailing their appeal petition to Regional Director, National Appeals Division, nor receipt of the applicants' appeal petition by the National Appeals Division, Eastern Regional Office, nor the National Appeals Division's delivering the applicants' appeal petition to the Office of the Judicial Officer, constitutes filing with the Hearing Clerk).

Hastings surmise, the letters dated July 25, 2011, and November 14, 2011, were received by a person other than the Hearing Clerk, they have not been filed with the Hearing Clerk, they are not part of the record, and they cannot be considered.

Second, Mr. Rodriguez and Ms. Hastings deny Ms. Hastings was the owner or exhibitor of "Broken Dreams" (Appeal Pet. at 1 ¶ 1).
The Hearing Clerk served Ms. Hastings with the Complaint on June 29, 2011.[7] Ms. Hastings was required by the Rules of Practice to file a response to the Complaint within 20 days after the Hearing Clerk served her with the Complaint;[8] namely, no later than July 19, 2011. The Rules of Practice provide that failure to file a timely answer shall be deemed, for purposes of the proceeding, an admission of the allegations in the complaint.[9] Ms. Hastings' denial of the allegations of the Complaint in the Appeal Petition, filed December 28, 2011, 5 months 29 days after the Hearing Clerk served Ms. Hastings with the Complaint, comes far too late to be considered. As Ms. Hastings has failed to file a timely answer, Ms. Hastings is deemed to have admitted the material allegations of the Complaint, and I reject her late-filed denial of the allegations of the Complaint.

Third, Mr. Rodriguez and Ms. Hastings assert they have been previously sanctioned by a horse industry organization for their activities on June 20, 2009, at the Eagleville Lions Club Horse Show, Eagleville, Tennessee (Appeal Pet. at 1 ¶ 2).

Mr. Rodriguez and Ms. Hastings make no argument based on this assertion. However, this very same assertion has been raised in previous cases in connection with the argument that a sanction by a horse industry organization bars the Secretary of Agriculture from enforcing the Horse Protection Act. That argument has no merit, and I have rejected the argument each time it has been raised.[10]

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[7] See note 1.
[8] See 7 C.F.R. § 1.136(a).
[9] See 7 C.F.R. § 1.136(c).
[10] *In re Robert Raymond Black, II*, 66 Agric. Dec. 1217, 1224-26 (2007), *aff'd sub nom. Derickson v. U.S. Dep't of Agric.*, 547 F.3d 335 (6th Cir. 2008); *In re* Jackie McConnell, 64 Agric. Dec. 436, 467-69 (2005), *aff'd*, 198 F. App'x 417 (6th Cir. 2006) (unpublished).

For the foregoing reasons, the following Order is issued.

ORDER

1. Harvey Rodriguez and Michelle Hastings are each assessed a $2,200 civil penalty. The civil penalties shall be paid by certified checks or money orders, made payable to the "Treasurer of the United States" and sent to:

Robert A. Ertman
United States Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW
Room 2343-South Building
Washington, DC 20250-1417

Mr. Rodriguez's civil penalty payment shall be received by Mr. Ertman within 60 days after service of this Order on Mr. Rodriguez. Ms. Hastings' civil penalty payment shall be received by Mr. Ertman within 60 days after service of this Order on Ms. Hastings. Mr. Rodriguez and Ms. Hastings shall indicate on the certified checks or money orders that the payments are in reference to HPA Docket No. 11-0242.

2. Harvey Rodriguez and Michelle Hastings are disqualified for one uninterrupted year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, corporation, partnership, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction. "Participating" means engaging in any activity beyond that of a spectator, and includes, without limitation: (1) transporting, or arranging for the transportation of, horses to or from equine events; (2) personally giving instructions to exhibitors; (3) being present in the warm-up or inspection areas or in any area where spectators are not allowed; and (4) financing the participation of others in equine events.
The disqualification of Mr. Rodriguez shall become effective on the 60th day after service of this Order on Mr. Rodriguez. The disqualification

of Ms. Hastings shall become effective on the 60th day after service of this Order on Ms. Hastings.

RIGHT TO JUDICIAL REVIEW

Harvey Rodriguez and Michelle Hastings have the right to obtain review of this Order in the court of appeals of the United States for the circuit in which they reside or have their place of business or in the United States Court of Appeals for the District of Columbia Circuit. Mr. Rodriguez and Ms. Hastings must file a notice of appeal in such court within 30 days from the date of this Order and must simultaneously send a copy of any notice of appeal by certified mail to the Secretary of Agriculture.[11]

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[11] 15 U.S.C. § 1825(b)(2), (c).

MISCELLANEOUS ORDERS

Editor's Note: This volume continues the new format of reporting Administrative Law Judge orders involving non-precedent matters [Miscellaneous Orders] with the sparse case citation but without the body of the order. Miscellaneous Orders (if any) issued by the Judicial Officer will continue to be reported here in full context. The parties in the case will still be reported in Part IV (List of Decisions Reported – Alphabetical Index). Also, the full text of these cases will continue to be posted in a timely manner at: www.dm.usda.gov/oaljdecisions].

ADMINISTRATIVE WAGE GARNISHMENT

CHAD SOLOMON.
Docket No. 12-0048.
Miscellaneous Order.
Filed January 13, 2012.

DONNA J. PRESCOTT.
Docket No. 12-0035.
Miscellaneous Order.
Filed January 18, 2012.

PAULA ROBERTS.
Docket No. 12-0021.
Miscellaneous Order.
Filed January 20, 2012.

JASON FRANCIS.
Docket No. 12-0022.
Miscellaneous Order.
Filed January 23, 2012.

TERRY DAUFEN.
Docket No. 12-0074.
Miscellaneous Order.
Filed January 24, 2012.

STEVEN RICHARDS.
Docket No. 11-0249.
Miscellaneous Order.
Filed January 31, 2012.

MATTHEW MCCRIMMON.
Docket No. 12-0096.
Miscellaneous Order.
Filed February 6, 2012.

DONNA MORRIS.
Docket No. 12-0097.
Miscellaneous Order.
Filed February 6, 2012.

DANIEL PERRY.
Docket No. 12-0124.
Miscellaneous Order.
Filed February 6, 2012.

CHAD HILTNER.
Docket No. 12-0218.
Miscellaneous Order.
Filed February 16, 2012.

FLORENTINO GUZMAN.
Docket No. 12-0178.
Miscellaneous Order.
Filed March 5, 2012.

BEVERLY MORSE.
Docket No. 12-0119.
Miscellaneous Order.
Filed March 8, 2012.

JASON MOTA.
Docket No. 12-0227.
Miscellaneous Order.
Filed March 8, 2012.

NATALIE R. ODEN.
Docket No. 12-0120.

Miscellaneous Order.
Filed March 8, 2012.

TRACEY D. JONES.
Docket No. 11-0159.
Miscellaneous Order.
Filed March 9, 2012.

ANGELIQUE M. STRAUSBAUGH.
Docket No. 12-0219.
Miscellaneous Order.
Filed March 14, 2012.

CASSANDRA D. HORN.
Docket No. 11-0246.
Miscellaneous Order.
Filed March 29, 2012.

BETH MILLER.
Docket No. 12-0254.
Miscellaneous Order.
Filed March 29, 2012.

BARBARA L. MEANS.
Docket No. 11-0321.
Miscellaneous Order.
Filed March 30, 2012.

MARK J. CUCCHIARA.
Docket No. 12-0258.
Miscellaneous Order.
Filed April 10, 2012.

JAMES RING.
Docket No. 12-0255.
Miscellaneous Order.
Filed April 11, 2012.

SILVINO DUARTE AREVALO.

Docket No. 12-0279.
Miscellaneous Order.
Filed April 12, 2012.

J R ISABELL.
Docket No. 12-0281.
Miscellaneous Order.
Filed April 12, 2012.

TONI L. YIELDING.
Docket No. 12-0278.
Miscellaneous Order.
Filed April 12, 2012.

VICTOR TERAN.
Docket No. 12-0313.
Miscellaneous Order.
Filed April 18, 2012.

MARLIN WEAR.
Docket No. 12-0159.
Miscellaneous Order.
Filed April 18, 2012.

ABBY CLINE.
Docket No. 12-0268.
Miscellaneous Order.
Filed April 25, 2012.

RONALD E. MILES, JR.
Docket No. 12-0266.
Miscellaneous Order.
Filed April 26, 2012.

JEFFREY ROTH.
Docket No. 12-0333.
Miscellaneous Order.
Filed May 9, 2012.

ELIZABETH GARCIA.
Docket No. 12-0379.
Miscellaneous Order.
Filed May 14, 2012.

REBECCA RANDALL.
Docket No. 12-0181.
Miscellaneous Order.
Filed May 15, 2012.

ASHLE THOMPSON.
Docket No. 12-0304.
Miscellaneous Order.
Filed May 17, 2012.

JOHN EVANS.
Docket No. 12-0317.
Miscellaneous Order.
Filed May 23, 2012.

MAURICE PETERSON.
Docket No. 12-0347.
Miscellaneous Order.
Filed May 24, 2012.

CHRISTINE SPAIN.
Docket No. 12-0410.
Miscellaneous Order.
Filed May 25, 2012.

BRANDON HUGHES.
Docket No. 12-0370.
Miscellaneous Order.
Filed May 30, 2012.

SANDRA HILL.
Docket No. 12-0369.
Miscellaneous Order.

Filed June 8, 2012.

WOODY SPENCER.
Docket No. 12-0436.
Miscellaneous Order.
Filed June 14, 2012.

ARLIE BENSON.
Docket No. 12-0415.
Miscellaneous Order.
Filed June 15, 2012.

SHELLY J. MOORE.
Docket No. 12-0343.
Miscellaneous Order.
Filed June 18, 2012.

RAYMOND ORTEGA.
Docket No. 12-0381.
Miscellaneous Order.
Filed June 27, 2012.

MICHELLE SHAW.
Docket No. 12-0334.
Miscellaneous Order.
Filed June 28, 2012.

AGRICULTURAL MARKETING AGREEMENT ACT

In re: GH DAIRY.
Docket No. M 10-0283.
Miscellaneous Order.
Filed March 19, 2012.

AMA.

Sharlene Deskins, Esq. for AMS.
Alfred W. Ricciardi, Esq. for Respondent.
Initial Decision by Jill S. Clifton, Administrative Law Judge.

Ruling by William G. Jenson, Judicial Officer.

RULING GRANTING IDFA AND NMPF'S MOTION FOR LEAVE TO FILE AMICUS BRIEF

On November 25, 2011, the International Dairy Foods Association [hereinafter IDFA] and the National Milk Producers Federation [hereinafter NMPF] filed "Motion of the International Dairy Foods Association and the National Milk Producers Federation for Leave to File an Amicus Brief in Opposition to Petitioner GH Dairy's Appeal to the Judicial Officer" [hereinafter Motion for Leave to File Amicus Brief]. Attached to the Motion for Leave to File Amicus Brief is the brief which IDFA and NMPF seek to be permitted to file.

The rules of practice governing this proceeding[1] provide that any person (other than the petitioner) showing a substantial interest in the outcome of a proceeding may be permitted to intervene, as follows:

> **§ 900.57 Intervention.**
>
> Intervention in proceedings subject to this subpart shall not be allowed, except that, in the discretion of the Secretary or the judge, any person (other than the petitioner) showing a substantial interest in the outcome of a proceeding shall be permitted to participate in the oral argument and to file a brief.

7 C.F.R. § 900.57. IDFA and NMPF assert each has a substantial interest in the outcome of the instant proceeding. The parties did not respond to IDFA and NMPF's Motion for Leave to File Amicus Brief. After consideration of IDFA and NMPF's Motion for Leave to File Amicus Brief, I find each has shown a substantial interest in the outcome of the instant proceeding. Therefore, I grant IDFA and NMPF's Motion for Leave to File Amicus Brief.

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[1] The rules of practice governing this proceeding are the "Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders" (7 C.F.R. §§ 900.50-.71).

In re: GH DAIRY.
Docket No. M 10-0283.
Miscellaneous Order.
Filed May 29, 2012.

AMA.

Alfred W. Ricciardi, Esq. for Petitioner.
Sharlene Deskins, Esq. for AMS.
Initial Decision by Jill S. Clifton, Administrative Law Judge.
Ruling by William J. Jenson, Judicial Officer.

ORDER EXTENDING TIME FOR FILING THE ADMINISTRATOR'S RESPONSE TO GH DAIRY'S PETITION TO RECONSIDER

On May 25, 2012, the Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter the Administrator], requested that I extend to June 15, 2012, the time for filing a response to GH Dairy's Petition for Reconsideration of the Judicial Officer's Order in *In re GH Dairy*, __ Agric. Dec. ___ (Apr. 24, 2012) [hereinafter Petition to Reconsider]. Counsel for GH Dairy, counsel for the International Dairy Foods Association, and counsel for the National Milk Producers Federation have no objection to the requested extension of time. Therefore, I grant the Administrator's motion for extension of time. The time for filing the Administrator's response to GH Dairy's Petition to Reconsider is extended to, and includes, June 15, 2012.[1]

In re: GH DAIRY.
Docket No. M 10-0283.
Miscellaneous Order.
Filed June 21, 2012.

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[1] The Hearing Clerk's office receives documents from 8:30 a.m. to 4:30 p.m., Eastern Time. To ensure timely filing, the Administrator must ensure the response to GH Dairy's Petition to Reconsider is received by the Hearing Clerk no later than 4:30 p.m., Eastern Time, June 15, 2012.

AMA.

Sharlene Deskins, Esq. for AMS.
Alfred W. Ricciardi, Esq. for Respondent.
Initial Decision by Jill S. Clifton, Administrative Law Judge.
Ruling by William G. Jenson, Judicial Officer.

ORDER DENYING PETITION TO RECONSIDER

Procedural History

On May 8, 2012, GH Dairy filed a petition requesting that I reconsider *In re GH Dairy*, __ Agric. Dec. __ (Apr. 24, 2012) [hereinafter Petition to Reconsider]. On June 13, 2012, the Administrator, Agricultural Marketing Service, United States Department of Agriculture [hereinafter the Administrator], filed a response to GH Dairy's Petition to Reconsider. On June 15, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration of, and a ruling on, GH Dairy's Petition to Reconsider.

Ruling on Petition to Reconsider

GH Dairy's Request for Oral Argument

GH Dairy's request for oral argument before the Judicial Officer on the issues raised in the Petition to Reconsider[1] is denied because the issues have been thoroughly briefed by GH Dairy, the Administrator, the International Dairy Foods Association, and the National Milk Producers Federation.

Discussion

On November 4, 2011, GH Dairy filed an "Appeal to the Judicial Officer and Request for Oral Argument" in which GH Dairy raised 12 issues. In its Petition to Reconsider, GH Dairy requests that I reconsider and reverse my findings and conclusions regarding seven of the 12 issues addressed in *In re GH Dairy*, __ Agric. Dec. ___ (Apr. 24,

[1] Petition to Reconsider at 9 ¶ III.

2012).[2] Specifically, GH Dairy requests that I reconsider and reverse the following: (1) the conclusion that the Secretary of Agriculture is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. §§ 601-674) [hereinafter the AMAA], to regulate producer-handlers who do not purchase milk; (2) the finding that the Agricultural Marketing Service's response to a public comment, published at 64 Fed. Reg. 16,026, 16135 (Apr. 2, 1999), is wrong; (3) the conclusion that the Milk Regulatory Equity Act of 2005 supports the Secretary of Agriculture's authority to regulate producer-handlers; (4) the finding that the final rule published at 75 Fed. Reg. 21,157 (Apr. 23, 2010) [hereinafter the Final Rule] is supported by substantial evidence; (5) the conclusion that the Final Rule does not violate the AMAA's prohibition on trade barriers in 7 U.S.C. § 608c(5)(G); (6) the finding of no merit in GH Dairy's claim that the Final Rule violates the requirement of uniform minimum prices among handlers in 7 U.S.C. § 608c(5)(C); and (7) the finding that dairy farm size is a reasonable method by which to distinguish small producer-handlers from large producer-handlers.

GH Dairy raises the same arguments that I considered and rejected in *In re GH Dairy*, __ Agric. Dec. ___ (Apr. 24, 2012). Nonetheless, I have carefully reviewed *In re GH Dairy* __ Agric. Dec. ___ (Apr. 24, 2012), in light of GH Dairy's Petition to Reconsider. I find no error regarding the seven issues raised in GH Dairy's Petition to Reconsider, and I find no purpose would be served by my reiterating the discussion of these seven issues that appears in *In re GH Dairy*, __ Agric. Dec. ___ (Apr. 24, 2012).

A petition to reconsider is only granted, absent highly unusual circumstances, if the Judicial Officer has committed error or if there is an intervening change in controlling law.[3] Based upon my review of the record, in light of the issues raised in GH Dairy's Petition to Reconsider, I find no error of law or fact necessitating modification of *In re GH Dairy*, __ Agric. Dec. ___ (Apr. 24, 2012). Moreover, GH Dairy does not assert an intervening change in controlling law, and I find no highly unusual

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[2] GH Dairy does not waive any objections to other findings and conclusions in *In re GH Dairy*, __ Agric. Dec. ___ (Apr. 24, 2012) (Pet. to Reconsider at 9 ¶ IV).

[3] *In re Jack L. Rader*, __ Agric. Dec. ___, slip op. at 1-2 (Jan. 30, 2012); *In re Sam Mazzola* (Order Denying Pet. for Recons. and Ruling Denying Mot. for Oral Argument), 69 Agric. Dec. 536, 537 (2010).

circumstances necessitating modification of *In re GH Dairy*, __ Agric. Dec. ___ (Apr. 24, 2012). For the foregoing reasons and the reasons set forth in *In re GH Dairy*, __ Agric. Dec. ___ (Apr. 24, 2012), the following Order is issued.

ORDER

GH Dairy's Petition to Reconsider, filed May 8, 2012, is denied. This Order shall become effective upon service on GH Dairy.

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ANIMAL WELFARE ACT

MARTINE COLETTE, AN INDIVIDUAL; WILDLIFE WAYSTATION, A CALIFORNIA CORPORATION; AND ROBERT H. LORSCH, AN INDDIVIDUAL.
Docket No. 12-0157; 07-0175.
Miscellaneous Order.
Filed January 3, 2012.

UNITED STATES ZOOLOGICAL SOCIETY, INC., D/B/A TEXAS OUTREACH ZOO & SERVICE.
Docket No. 08-0098.
Miscellaneous Order.
Filed January 6, 2012.

CALLI DOTSON & GARY DOTSON.
Docket No. 11-0419; 11-0420.
Miscellaneous Order.
Filed January 6, 2012.

In re: BODIE S. KNAPP, AN INDIVIDUAL, D/B/A THE WILD SIDE; AND KIMBERLY G. FINLEY, AN INDIVIDUAL.
Docket No. 09-0175.
Miscellaneous Order.
Filed January 20, 2012.

AWA.

Colleen A. Carroll, Esq. for Complainant.
Philip Westergren, Esq. for Respondents.
Initial Decision by Peter M. Davenport, Chief Administrative Law Judge.
Ruling by William G. Jenson, Judicial Officer.

ORDER EXTENDING TIME FOR FILING MR. KNAPP'S RESPONSE TO ADMINISTRATOR'S APPEAL PETITION

On January 19, 2012, Bodie S. Knapp requested that I extend the time for his filing a response to the appeal petition filed by Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator]. For good reason stated, Mr. Knapp's motion to extend the time for filing a response to the Administrator's appeal petition is granted. The time for filing Mr. Knapp's response to the Administrator's appeal petition is extended to, and includes, February 29, 2012.[1]

In re: TERRANOVA ENTERPRISES, INC., A TEXAS CORPORATION, D/B/A ANIMAL ENCOUNTERS, INC.; DOUGLAS KEITH TERRANOVA, AN INDIVIDUAL; WILL ANN TERRANOVA, AN INDIVIDUAL; FARIN FLEMING, AN INDIVIDUAL; CRAIG PERRY, AN INDIVIDUAL, D/B/A PERRY'S EXOTIC PETTING ZOO; PERRY'S WILDERNESS RANCH & ZOO, INC.; EUGENE ("TREY") KEY, III, AN INDIVIDUAL; AND KEY EQUIPMENT COMPANY, INC., AN OKLAHOMA COPORATION, D/B/A CULPEPPER & MERRIWEATHER CIRCUS.
Docket No. 09-0155; 10-0418.
Miscellaneous Order.
Filed January 24, 2012.

AWA.

Colleen A. Carroll, Esq. for Complainant.

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[1] The Hearing Clerk's office receives documents from 8:30 a.m. to 4:30 p.m., Eastern Time. To ensure timely filing, Mr. Knapp must ensure the response to the Administrator's appeal petition is received by the Hearing Clerk no later than 4:30 p.m., Eastern Time, February 29, 2012.

Mornning & Wynne, LLP for Respondent.
Initial Decision by Janice K. Bullard, Administrative Law Judge.
Ruling by William G. Jenson, Judicial Officer.

ORDER EXTENDING TIME FOR FILING THE ADMINISTRATOR'S APPEAL PETITION

On January 23, 2012, counsel for the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], by telephone, requested that I extend to January 27, 2012, the time for the Administrator's filing an appeal of Decision and Order (Craig Perry, d/b/a Perry's Exotic Petting Zoo; Perry's Wilderness Ranch & Zoo, Inc.). For good reason stated, the Administrator's motion to extend the time for filing an appeal petition is granted. The time for filing the Administrator's appeal petition is extended to, and includes, January 27, 2012.[1]

In re: BODIE S. KNAPP, AN INDIVIDUAL, D/B/A THE WILD SIDE; AND KIMBERLY G. FINLEY, AN INDIVIDUAL.
Docket No. 09-0175.
Miscellaneous Order.
Filed January 30, 2012.

AWA.

Colleen A. Carroll, Esq. for Complainant.
Philip Westergren, Esq. for Respondents.
Initial Decision by Peter M. Davenport, Chief Administrative Law Judge.
Ruling by William G. Jenson, Judicial Officer.

RULING DENYING MR. KNAPP'S MOTION TO STRIKE THE ADMINISTRATOR'S APPEAL PETITION

Discussion

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[1] The Hearing Clerk's office receives documents from 8:30 a.m. to 4:30 p.m., Eastern Time. To ensure timely filing, the Administrator must ensure the appeal petition is received by the Hearing Clerk no later than 4:30 p.m., Eastern Time, January 27, 2012.

On December 20, 2011, Bodie S. Knapp filed Respondent's Motion to Strike Appeal Petition asserting Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], did not request an extension of time within which to file an appeal petition until after the time for filing the Administrator's appeal petition had expired. Mr. Knapp requests that I strike the Administrator's appeal petition as late-filed and affirm Chief Administrative Law Judge Peter M. Davenport's [hereinafter the Chief ALJ] Decision and Order.

On January 9, 2012, the Administrator filed Complainant's Response to Motion to Strike Appeal Petition asserting his October 27, 2011, request for an extension of time within which to file an appeal petition was filed before the time for filing an appeal petition had expired. The Administrator contends, therefore, Complainant's Petition for Appeal of Initial Decision as to Respondent Bodie S. Knapp was timely filed and requests that I deny Respondent's Motion to Strike Appeal Petition. On January 26, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration of, and a ruling on, Respondent's Motion to Strike Appeal Petition.

Mr. Knapp contends the Chief ALJ is the Administrator's employee, and, since the Administrator's employee had notice of, and was in receipt of, the Chief ALJ's Decision and Order on the date the Chief ALJ issued the Decision and Order, September 26, 2011, the Administrator's 30-day period for filing an appeal petition began to run on September 26, 2011, and expired on October 25, 2011.

The delegations of authority by the Secretary of Agriculture and the General Officers of the United States Department of Agriculture establish that the Chief ALJ is not an employee of the Administrator (7 C.F.R. pt. 2). Instead, the Office of Administrative Law Judges derives its authority directly from the Secretary of Agriculture (7 C.F.R. § 2.27) and the Administrator derives authority from the Under Secretary for Marketing and Regulatory Programs (7 C.F.R. § 2.80). Therefore, I reject Mr. Knapp's contentions that the Chief ALJ is the Administrator's employee and that the Administrator's 30-day period for filing an appeal

petition began to run as soon as the Chief ALJ issued the Decision and Order.

The rules of practice applicable to this proceeding[1] provide that a party may file an appeal of an administrative law judge's written decision within 30 days after receiving service of that decision (7 C.F.R. § 1.145(a)). The record before me establishes that the Chief ALJ issued a Decision and Order on September 26, 2011,[2] and filed the Decision and Order with the Hearing Clerk on September 27, 2011.[3] The Hearing Clerk served counsel for the Administrator with the Chief ALJ's Decision and Order on September 29, 2011.[4] Thirty days after the date the Hearing Clerk served counsel for the Administrator with the Chief ALJ's Decision and Order was Saturday, October 29, 2011. The Rules of Practice provide, when the time for filing a document or paper expires on a Saturday, the time for filing shall be extended to the next business day, as follows:

> **§ 1.147 Filing; service; extensions of time; and computation of time.**
>
> . . . .
>
> (h) *Computation of time*. Saturdays, Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided*, That, when such time expires on a Saturday, Sunday, or Federal holiday, such period shall be extended to include the next following business day.

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[1] The rules of practice applicable to this proceeding are the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151) [hereinafter the Rules of Practice].

[2] Chief ALJ's Decision and Order at 23.

[3] See the Office of the Hearing Clerk's time and date stamp establishing that the Office of the Hearing Clerk received the Chief ALJ's Decision and Order on September 27, 2011, at 9:46 a.m. (Chief ALJ's Decision and Order at 1).

[4] See Office of the Hearing Clerk's Request for Special Service signed by Ada Quick establishing that the Hearing Clerk delivered the Chief ALJ's Decision and Order by messenger to the counsel for the Administrator's office on September 29, 2011. Counsel for the Administrator asserts the Hearing Clerk served her with the Chief ALJ's Decision and Order on September 28, 2011 (Complainant's Response to Motion to Strike Appeal Pet. at 1). Even if I were to find the Hearing Clerk served counsel for the Administrator with the Chief ALJ's Decision and Order on September 28, 2011, that finding would not change my ruling on Respondent's Motion to Strike Appeal Petition.

7 C.F.R. § 1.147(h). The next business day after Saturday, October 29, 2011, was Monday, October 31, 2011. Thus, before any extension of time was granted, the Administrator's appeal petition was required to be filed with the Hearing Clerk no later than October 31, 2011. Therefore, I reject Mr. Knapp's contention that the Administrator's request for an extension of time within which to file an appeal petition, which the Administrator filed with the Hearing Clerk on October 27, 2011, was filed after the time for filing the Administrator's appeal petition had expired.

RULING

Respondent's Motion to Strike Appeal Petition, filed December 20, 2011, is denied.

In re: BODIE S. KNAPP, AN INDIVIDUAL, D/B/A THE WILD SIDE; AND KIMBERLY G. FINLEY, AN INDIVIDUAL.
Docket No. 09-0175.
Miscellaneous Order.
Filed January 31, 2012.

AWA.

Colleen A. Carroll, Esq. for Complainant.
Philip Westergren, Esq. for Respondents.
Initial Decision by Peter M. Davenport, Chief Administrative Law Judge.
Ruling by William G. Jenson, Judicial Officer.

RULING GRANTING THE ADMINISTRATOR'S MOTION TO STRIKE MR. KNAPP'S PETITION FOR ATTORNEY FEES AND OTHER EXPENSES

Discussion

On September 27, 2011, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] filed a Decision and Order in which he ordered counsel for Bodie S. Knapp to submit a petition for award of attorney fees and expenses not later than 60 days after service of the Decision and Order on Mr. Knapp, provided the Decision and Order is not

appealed (Decision and Order at 23 ¶ 3). On November 29, 2011, Mr. Knapp filed Respondent Bodie Knapp's Petition for Attorneys Fees and Expenses pursuant to the Equal Access to Justice Act (5 U.S.C. § 504) and the Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department (7 C.F.R. §§ 1.180-1.203) [hereinafter the Rules of Practice]. On December 8, 2011, Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], filed Complainant's Motion to Strike Petition for Fees and Expenses or, in the Alternative, Response to Petition [hereinafter Motion to Strike]. On December 20, 2011, Mr. Knapp filed a response to the Administrator's Motion to Strike. On January 26, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration of, and a ruling on, the Administrator's Motion to Strike.

The Administrator argues Respondent Bodie Knapp's Petition for Attorneys Fees and Expenses is premature as the instant proceeding is on appeal to the Judicial Officer and no final agency decision has been issued (Mot. to Strike at 2). Mr. Knapp asserts Respondent Bodie Knapp's Petition for Attorneys Fees and Expenses is not premature as the Administrator's appeal petition was not timely filed.

The record establishes that the Administrator's December 5, 2011, appeal of the Chief ALJ's Decision and Order to the Judicial Officer was timely filed.[1] Mr. Knapp's response to the Administrator's appeal petition is not due until February 29, 2012,[2] and the Judicial Officer has not issued a final agency decision. The Equal Access to Justice Act and the Rules of Practice provide that a party may only request attorney fees and other expenses within 30 days after final disposition of a proceeding.[3]

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[1] See: (1) the Judicial Officer's October 31, 2011, Order Extending Time for Filing the Administrator's Appeal Petition to November 28, 2011; (2) the Judicial Officer's November 29, 2011, Order Extending Time for Filing the Administrator's Appeal Petition to November 30, 2011; and (3) the Judicial Officer's November 30, 2011, Order Extending Time for Filing the Administrator's Appeal Petition to December 5, 2011.

[2] See: (1) the Judicial Officer's December 27, 2011, Order Extending Time for Filing Mr. Knapp's Response to the Administrator's Appeal Petition to January 30, 2012; and (2) the Judicial Officer's January 20, 2012, Order Extending Time for Filing Mr. Knapp's Response to the Administrator's Appeal Petition to February 29, 2012.

[3] 5 U.S.C. § 504(a)(2); 7 C.F.R. § 1.193. *See also In re Asakawa Farms*, 50 Agric. Dec. 1144, 1164 (1991), *dismissed*, No. CV-F-91-686-OWW (E.D. Cal. Sept. 28, 1993).

Therefore, I conclude Respondent Bodie Knapp's Petition for Attorneys Fees and Expenses is premature, and I grant the Administrator's Motion to Strike.

For the foregoing reasons, the following Ruling is issued.

RULING

1. The Administrator's Motion to Strike, filed December 8, 2011, is granted.

2. Respondent Bodie Knapp's Petition for Attorneys Fees and Expenses, filed November 29, 2011, is stricken.

In re: BODIE S. KNAPP, AN INDIVIDUAL, D/B/A THE WILD SIDE; AND KIMBERLY G. FINLEY, AN INDIVIDUAL.
Docket No. 09-0175.
Miscellaneous Order.
Filed March 21, 2012.

AWA.

Colleen A. Carroll, Esq. for Complainant.
Philip Westergren, Esq. for Respondents.
Initial Decision by Peter M. Davenport, Chief Administrative Law Judge.
Ruling by William G. Jenson, Judicial Officer.

ORDER EXTENDING TIME FOR FILING THE ADMINISTRATOR'S RESPONSE TO MR. KNAPP'S CROSS-APPEAL

On March 20, 2012, counsel for Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], by telephone, requested that I extend to March 26, 2012, the time for filing a response to a cross-appeal filed by Bodie S. Knapp. For good reason stated, the Administrator's motion to extend the time for filing a response to Mr. Knapp's cross-appeal is granted. The time for filing the Administrator's response

to Mr. Knapp's cross-appeal is extended to, and includes, March 26, 2012.[1]

In re: BODIE S. KNAPP, AN INDIVIDUAL, D/B/A THE WILD SIDE; AND KIMBERLY G. FINLEY, AN INDIVIDUAL.
Docket No. 09-0175.
Miscellaneous Order.
Filed March 27, 2012.

AWA.

Colleen A. Carroll, Esq. for Complainant.
Philip Westergren, Esq. for Respondents.
Initial Decision by Peter M. Davenport, Chief Administrative Law Judge.
Ruling by William G. Jenson, Judicial Officer.

ORDER EXTENDING TIME FOR FILING THE ADMINISTRATOR'S RESPONSE TO MR. KNAPP'S CROSS-APPEAL

On March 26, 2012, Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], requested that I extend to March 27, 2012, the time for filing a response to a cross-appeal filed by Bodie S. Knapp. For good reason stated, the Administrator's motion to extend the time for filing a response to Mr. Knapp's cross-appeal is granted. The time for filing the Administrator's response to Mr. Knapp's cross-appeal is extended to, and includes, March 27, 2012.[1]

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[1] The Hearing Clerk's office receives documents from 8:30 a.m. to 4:30 p.m., Eastern Time. To ensure timely filing, the Administrator must ensure the response to Mr. Knapp's cross-appeal is received by the Hearing Clerk no later than 4:30 p.m., Eastern Time, March 26, 2012.

[1] The Hearing Clerk's office receives documents from 8:30 a.m. to 4:30 p.m., Eastern Time. To ensure timely filing, the Administrator must ensure the response to Mr. Knapp's cross-appeal is received by the Hearing Clerk no later than 4:30 p.m., Eastern Time, March 27, 2012.

AMERIJET INTERNATIONAL, INC., A FLORIDA CORPORATION.
Docket No. 11-0253.
Miscellaneous Order.
Filed March 27, 2012.

GEORGIANNA DAVENPORT, A/K/A GIGI DAVENPORT, AN INDIVIDUAL D/B/A GIGI'S EXOTICS.
Docket No. 11-0316.
Miscellaneous Order.
Filed April 9, 2012.

In re: PERRY'S WILDERNESS RANCH & ZOO, INC., AN IOWA CORPORATION; AND LE ANNE SMITH, AN INDIVIDUAL.
Docket No. 05-0026.
Miscellaneous Order.
Filed April 24, 2012.

AWA.

Colleen A. Carroll, Esq. for Complainant.
Larry J. Thorson, Esq. for Respondents.
Initial Decision by Jill S. Clifton, Administrative Law Judge.
Order entered by William G. Jenson, Judicial Officer.

ORDER EXTENDING TIME FOR FILING ADMINISTRATOR'S APPEAL PETITIONS

On April 20, 2012, the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], requested that I extend to July 2, 2012, the time for appealing two initial decisions issued by Administrative Law Judge Jill S. Clifton in the instant proceeding, *In re Le Anne Smith*, __ Agric. Dec. ___ (Mar. 30, 2012), and *In re Craig A. Perry*, __ Agric. Dec. ___ (Mar. 29, 2012). For good reason stated, the Administrator's motion to extend the time for filing appeal petitions is granted. The time for filing the

Administrator's appeal petitions is extended to, and includes, July 2, 2012.[1]

JENNIFER LAMOREAUX.
Docket No. 12-0311.
Miscellaneous Order.
Filed May 18, 2012.

JAMES LAMOREAUX.
Docket No. 12-0312.
Miscellaneous Order.
Filed May 18, 2012.

In re: TERRANOVA ENTERPRISES, INC., A TEXAS CORPORATION, D/B/A ANIMAL ENCOUNTERS, INC.; DOUGLAS KEITH TERRANOVA, AN INDIVIDUAL; WILL ANN TERRANOVA, AN INDIVIDUAL; FARIN FLEMING, AND INDIVIDUAL; SLOAN DAMON, AN INDIVIDUAL; CRAIG PERRY, AN INDIVIDUAL, D/B/A PERRY'S EXOTIC PETTING ZOO; PERRY'S WILDERNESS RANCH & ZOO, INC., AN IOWA CORPORATION; EUGENE ("TREY") KEY III, AN INDIVIDUAL; AND KEY EQUIPMENT COMPANY, INC., AN OKLAHOMA CORPORATION, D/B/A CULPEPPER & MERRIWEATHER CIRCUS).
Docket No. 09-0155.
Miscellaneous Order.
Filed May 23, 2012.

AWA.

Colleen A. Carroll, Esq., for Complainant.
Mornning & Wynne, LLP for Respondents.
Initial Decision by Janice K. Bullard, Administrative Law Judge.
Ruling by William G. Jenson, Judicial Officer.

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[1] The Hearing Clerk's office receives documents from 8:30 a.m. to 4:30 p.m., Eastern Time. To ensure timely filing, the Administrator must ensure the appeal petitions are received by the Hearing Clerk no later than 4:30 p.m., Eastern Time, July 2, 2012.

REMAND ORDER

On January 17, 2012, Craig Perry and Perry's Wilderness Ranch & Zoo, Inc. [hereinafter the Applicants], instituted this administrative proceeding under the Equal Access to Justice Act (5 U.S.C. § 504) and the Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department (7 C.F.R. §§ 1.180-.203) [hereinafter EAJA Rules of Practice] by filing an "Application for Award of Attorney's Fees and Expenses" [hereinafter EAJA Application]. On February 3, 2012, Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], filed a motion to strike the Applicants' EAJA Application. On February 6, 2012, Administrative Law Judge Janice K. Bullard [hereinafter the ALJ] filed an Order deferring a ruling on the Applicants' EAJA Application to the jurisdiction of the Judicial Officer.

The EAJA Rules of Practice provide that the Judicial Officer's jurisdiction is triggered when an Equal Access to Justice Act applicant or agency counsel seeks review of an adjudicative officer's[1] initial decision on the fee application (7 C.F.R. § 1.201(a)). As there has been no request for review of an initial decision on the Applicants' EAJA Application, I have no jurisdiction over this Equal Access to Justice Act proceeding and I remand the proceeding to the ALJ for further proceedings in accordance with the Equal Access to Justice Act and the EAJA Rules of Practice.

On remand, the ALJ might consider issuing an order amending the caption in this proceeding to reflect the fact that only Mr. Perry and Perry's Wilderness Ranch & Zoo, Inc., have filed an EAJA Application and that they are Applicants, not "Respondents," as stated in the current case caption. In addition, I note the docket number assigned by the Hearing Clerk to this Equal Access to Justice Act proceeding is identical to the docket number assigned to a related proceeding that was instituted by the Administrator under the Animal Welfare Act and is now pending before me, *In re Terranova Enterprises, Inc.*, AWA Docket No. 09-0155.

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[1] The term "*Adjudicative Officer*" means "an administrative law judge, administrative judge, or other person assigned to conduct a proceeding covered by EAJA." (7 C.F.R. § 1.180(b).)

In order to avoid any confusion between the two proceedings, the ALJ might consider requesting that the Hearing Clerk assign a new docket number to this Equal Access to Justice Act proceeding.

For the foregoing reasons, the following Order is issued.

ORDER

This proceeding is remanded to Administrative Law Judge Janice K. Bullard for further proceedings in accordance with the Equal Access to Justice Act and the EAJA Rules of Practice.

MARICELLA ARVIZU.
Docket No. 12-0314.
Miscellaneous Order.
Filed June 1, 2012.

KELLY NULICK.
Docket No. 12-0302.
Miscellaneous Order.
Filed June 6, 2012.

DEER FOREST AMUSEMENTS, INC.
Docket No. 12-0042.
Miscellaneous Order.
Filed June 14, 2012.

BRENT TAYLOR, D/B/A ALLEN BROTHERS CIRCUS.
Docket No. 12-0477.
Miscellaneous Order.
Filed June 15, 2012.

WILLIAM BEDFORD, D/B/A ALLEN BROTHERS CIRCUS.
Docket No. 12-0478.
Miscellaneous Order.
Filed June 15, 2012.

HORSE PROTECTION ACT

In re: JACK L. RADER AND BARBARA L. RADER, INDIVIDUALS, AND D/B/A RADER STABLES.
Docket No. 11-0256; 11-0257.
Miscellaneous Order.
Filed January 4, 2012.

HPA.

Sharlene A. Deskins, Esq. for Complainant.
Respondents, pro se.
Initial Decision by Janice K. Bullard, Administrative Law Judge.
Ruling by William G. Jenson, Judicial Officer.

ORDER EXTENDING THE TIME FOR FILING RESPONDENTS' PETITION TO RECONSIDER

On January 3, 2012, Jack L. Rader and Barbara L. Rader requested that I extend the time for filing a petition to reconsider *In re Jack L. Rader*, __ Agric. Dec. ___ (Nov. 17, 2011), to January 10, 2012. For good reason stated, Mr. Rader and Mrs. Rader's request to extend the time for filing a petition to reconsider *In re Jack L. Rader*, __ Agric. Dec. ___ (Nov. 17, 2011), is granted. The time for filing Mr. Rader and Mrs. Rader's petition to reconsider is extended to, and includes, January 10, 2012.[1]

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In re: JACK L. RADER AND BARBARA L. RADER, INDIVIDUALS, AND D/B/A RADER STABLES.
Docket No. 11-0256; 11-0257.
Miscellaneous Order.
Filed January 30, 2012.

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[1] The Hearing Clerk's office receives documents from 8:30 a.m. to 4:30 p.m., Eastern Time. To ensure timely filing, Mr. Rader and Mrs. Rader must ensure their petition to reconsider is received by the Hearing Clerk no later than 4:30 p.m., Eastern Time, January 10, 2012.

HPA.

Sharlene A Deskins, Esq. for Complainant.
Respondents, pro se.
Initial Decision by Janice K. Bullard, Administrative Law Judge.
Ruling by William G. Jenson, Judicial Officer.

ORDER DENYING PETITION TO RECONSIDER

Procedural History

On January 10, 2012, Jack L. Rader and Barbara L. Rader filed a petition requesting that I reconsider *In re Jack L. Rader*, __ Agric. Dec. __ (Nov. 17, 2011) [hereinafter Petition to Reconsider]. On January 26, 2012, Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], filed a response to Mr. Rader and Mrs. Rader's Petition to Reconsider. On January 30, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration of, and a ruling on, Mr. Rader and Mrs. Rader's Petition to Reconsider.

The purpose of a petition to reconsider is to seek correction of manifest errors of law or fact. Petitions to reconsider are not to be used as vehicles merely for registering disagreement with the Judicial Officer's decision. A petition to reconsider is only granted, absent highly unusual circumstances, if the Judicial Officer has committed error or if there is an intervening change in controlling law.[1] Based upon my review of the record, in light of the issue raised in Mr. Rader and Mrs. Rader's Petition to Reconsider, I find no error of law or fact necessitating modification of *In re Jack L. Rader*, __ Agric. Dec. ___ (Nov. 17, 2011). Moreover, Mr. Rader and Mrs. Rader do not assert an intervening change in controlling law, and I find no highly unusual circumstances necessitating modification of *In re Jack L. Rader*, __ Agric. Dec. ___ (Nov. 17, 2011). Therefore, I deny Mr. Rader and Mrs. Rader's Petition to Reconsider *In re Jack L. Rader*, __ Agric. Dec. ___ (Nov. 17, 2011).

Discussion on Reconsideration

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[1] *In re Sam Mazzola* (Order Denying Pet. for Recons. and Ruling Denying Mot. for Oral Argument), __ Agric. Dec. ___, slip op. at 2 (Mar. 29, 2010).

In *In re Jack L. Rader*, __ Agric. Dec. ___ (Nov. 17, 2011), I found that Mr. Rader and Mrs. Rader failed to file a timely answer to the Complaint and, in accordance with the rules of practice applicable to this proceeding,[2] Mr. Rader and Mrs. Rader were deemed to have admitted the allegations in the Complaint[3] and waived the opportunity for hearing.[4] Mr. Rader and Mrs. Rader contend my finding that they failed to file a timely answer to the Complaint is error. Mr. Rader and Mrs. Rader request that I set aside Administrative Law Judge Janice K. Bullard's [hereinafter the ALJ] Decision and Order Entering Default Judgment and provide them an opportunity to be heard. (Pet. to Reconsider at second and third unnumbered pages.)

The Hearing Clerk served Mr. Rader and Mrs. Rader with the Complaint on June 9, 2011.[5] Mr. Rader and Mrs. Rader were required by the Rules of Practice to file a response to the Complaint with the Hearing Clerk within 20 days after the Hearing Clerk served them with the Complaint;[6] namely, no later than June 29, 2011. Instead, Mr. Rader and Mrs. Rader filed their responses to the Complaint with the Hearing Clerk on July 5, 2011, 6 days after Mr. Rader and Mrs. Rader were required to file a response.[7]

Moreover, I note Mr. Rader and Mrs. Rader's position in the Petition to Reconsider is contrary to their position earlier in the proceeding wherein

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[2] The rules of practice applicable to this proceeding are the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-1.151) [hereinafter the Rules of Practice].

[3] 7 C.F.R. § 1.136(c).

[4] 7 C.F.R. § 1.139.

[5] Domestic Return Receipt for article number 7009 1680 0001 9851 7509 and Domestic Return Receipt for article number 7009 1680 0001 9851 7493.

[6] See 7 C.F.R. § 1.136(a).

[7] See letter from Mrs. Barbara Rader to To Whom It May Concern, dated June 19, 2011, and stamped by the Office of the Hearing Clerk as having been received by the Office of the Hearing Clerk on July 5, 2011, at 4:03 p.m. See letter from Jack L. Rader to USDA, dated June 20, 2011, and stamped by the Office of the Hearing Clerk as having been received by the Office of the Hearing Clerk on July 5, 2011, at 4:03 p.m.

they concede their responses to the Complaint were late-filed.[8] Generally, a party is not allowed to argue a position in a petition to reconsider that is contrary to the position taken earlier in the proceeding.[9]

Therefore, I reject Mr. Rader and Mrs. Rader's contention in the Petition to Reconsider that their responses to the Complaint were timely filed with the Hearing Clerk. The Rules of Practice (7 C.F.R. § 1.136(c)) provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, pursuant to 7 C.F.R. § 1.139, the failure to file a timely answer constitutes a waiver of hearing. Accordingly, I deny Mr. Rader and Mrs. Rader's requests that I set aside the ALJ's Decision and Order Entering Default Judgment and that I remand the proceeding to the ALJ to provide Mr. Rader and Mrs. Rader an opportunity for hearing.

For the foregoing reasons and the reasons set forth in *In re Jack L. Rader*, __ Agric. Dec. ___ (Nov. 17, 2011), Mr. Rader and Mrs. Rader's Petition to Reconsider is denied. The Rules of Practice provide that the

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[8] See Mr. Rader and Mrs. Rader's appeal petition filed with the Hearing Clerk on October 19, 2011, in which they advance reasons for the timing of their responses to the Complaint but concede "[t]his made for a late response."

[9] *See generally Maryland Casualty Co. v. W.R. Grace & Co.*, 23 F.3d 617, 624 (2d Cir. 1993) (stating, where a party to litigation repeatedly represented that it would be bound by one interpretation of its insurance contracts, the party could not on appeal attempt to change course and rely on another interpretation of the contracts), *cert. denied*, 513 U.S. 1052 (1994); *EF Operating Corp. v. American Buildings*, 993 F.2d 1046, 1050 (3d Cir.) (stating one cannot cast aside representations, oral or written, in the course of litigation simply because it is convenient to do so and a reviewing court may properly consider the representations made in the appellate brief to be binding and decline to address a new legal argument based on a later repudiation of those representations), *cert. denied*, 510 U.S. 868 (1993); *Fleck v. KDI Sylvan Pools, Inc.*, 981 F.2d 107, 116 (3d Cir. 1992) (stating, when a litigant takes an unequivocal position at trial, that litigant cannot on appeal assume a contrary position simply because the position was a tactical mistake or a regretted concession), *cert. denied sub nom., Doughboy Recreational, Inc. v. Fleck*, 507 U.S. 1005 (1993); *Crenshaw v. Quarles Drilling Corp.*, 798 F.2d 1345, 1347 (10th Cir. 1986) (stating the general rule is that a party is not allowed to argue a legal position on appeal contrary to that argued at trial); *Richardson v. Turner*, 716 F.2d 1059, 1061 n.2 (4th Cir. 1983) (stating appellate courts generally should not decide a case on a legal theory directly contrary to that advanced by appellants at trial); *Burst v. Adolph Coors Co.*, 650 F.2d 930, 932 n.1 (8th Cir. 1981) (per curiam) (stating an appellate court will not consider an issue on which counsel took a contrary position before the trial court); *Alexander v. Town and Country Estates, Inc.*, 535 F.2d 1081, 1082 (8th Cir. 1976) (holding the court would not consider an issue on appeal where the litigant took a contrary position in district court).

decision of the Judicial Officer shall automatically be stayed pending the determination to grant or deny a timely filed petition to reconsider (7 C.F.R. § 1.146(b)). Mr. Rader and Mrs. Rader's Petition to Reconsider was timely filed and automatically stayed *In re Jack L. Rader*, __ Agric. Dec. ___ (Nov. 17, 2011). Therefore, since Mr. Rader and Mrs. Rader's Petition to Reconsider is denied, I hereby lift the automatic stay, and the Order in *In re Jack L. Rader*, __ Agric. Dec. ___ (Nov. 17, 2011), is reinstated.

For the foregoing reasons, the following Order is issued.

ORDER

Jack L. Rader and Barbara L. Rader's Petition to Reconsider, filed January 10, 2012, is denied. This Order shall become effective upon service on Jack L. Rader and Barbara L. Rader.

In re: JACK L. RADER AND BARBARA L. RADER, INDIVIDUALS, AND D/B/A RADER STABLES.
Docket No. 11-0256; 11-0257.
Miscellaneous Order.
Filed March 8, 2012.

HPA.

Sharlene A Deskins, Esq. for Complainant.
Respondents, pro se.
Initial Decision by Janice K. Bullard, Administrative Law Judge.
Ruling by William G. Jenson, Judicial Officer.

ORDER GRANTING JOINT REQUEST TO MODIFY ORDER

In *In re Jack L. Rader*, __ Agric. Dec. __ (Nov. 17, 2011), I issued an Order against Mr. Rader and Mrs. Rader. On March 6, 2012, the parties to this proceeding filed a Joint Request to Modify Order in which the parties requested modification of the November 17, 2011, Order. On March 7, 2012, the Hearing Clerk transmitted the record to the Office of

the Judicial Officer for consideration of, and a ruling on, the parties' Joint Request to Modify Order.

Based upon the agreement of the parties, I vacate the Order in *In re Jack L. Rader*, __ Agric. Dec. ___ (Nov. 17, 2011), and substitute the following Order in its place:

ORDER

> Jack L. Rader and Barbara L. Rader are disqualified for 1 uninterrupted year from showing, exhibiting, or entering any horse, directly or indirectly through any agent, employee, corporation, partnership, or other device, and from judging, managing, or otherwise participating in any horse show, horse exhibition, horse sale, or horse auction. "Participating" means engaging in any activity beyond that of a spectator, and includes, without limitation: (1) transporting, or arranging for the transportation of, horses to or from equine events; (2) personally giving instructions to exhibitors; (3) being present in the warm-up or inspection areas or in any area where spectators are not allowed; and (4) financing the participation of others in equine events. Mr. Rader and Mrs. Rader's period of disqualification commences retroactively on March 1, 2012.

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TYLER OLIVER.
Docket No. 12-0447.
Miscellaneous Order.
Filed May 24, 2012.

DEFAULT DECISIONS

Editor's Note: This volume continues the new format of reporting Administrative Law Judge orders involving non-precedent matters [Default Orders] with the sparse case citation but without the body of the order. Default Orders (if any) issued by the Judicial Officer will continue to be reported here in full context. The parties in the case will still be reported in Part IV (List of Decisions Reported – Alphabetical Index). Also, the full text of these cases will continue to be posted in a timely manner at: www.dm.usda.gov/oaljdecisions].

AGRICULTURE MARKETING AGREEMENT ACT

BAKER WALNUT, INC.
Docket No. 12-0232.
Default Decision.
Filed April 25, 2012.

ANIMAL WELFARE ACT

CODY BILL HARMON & CHRISTI DAWN HARMON.
Docket No. 12-0142.
Default Decision.
Filed March 9, 2012.

CHRISTI DAWN HARMON.
Docket No. 12-0143.
Default Decision.
Filed March 9, 2012.

FEDERAL MEAT INSPECTION ACT / POULTRY PRODUCTS INSPECTION ACT

COCKRUM MEAT PROCESSING AND TAXIDERMY.
Docket No. 12-0086.
Default Decision.
Filed March 9, 2012.

RANDALL L. COCKRUM.
Docket No. 12-0087.
Default Decision.

Filed March 9, 2012.

HORSE PROTECTION ACT

TIMOTHY WAYNE HOLLEY.
Docket No. 11-0367.
Default Decision.
Filed February 9, 2012.

CONSENT DECISIONS

ANIMAL WELFARE ACT

Charlene Fisher, AWA-12-0007, 01/12/12.
Gary Dotson, AWA-11-0419, 01/30/12.
Isaac Martin, AWA-12-0004, 02/02/12.
ZooCats, Inc., a Texas corporation; Marcus Cook, a/k/a Marcus Cline-Hines Cook, an individual; & Melissa Coody, a/k/a Misty Coody, an individual; jointly d/b/a Zoo Dynamics & ZooCats Geological Systems, AWA-07-0208, 02/06/12.
Marcus Cook, AWA-07-0209, 02/06/12.
Melissa Coody, AWA 07-0210, 02/06/12.
Dawn Talbott, AWA-09-0203, AWA-09-0196, 02/17/12.
John Breidenbach, AWA-09-0204, AWA-09-0196, 02/17/12.
Summer Wind Farm Sanctuary, a Michigan corporation, AWA-11-0223, 03/08/12.
Ben Korn, AWA-12-0289, AWA-09-0196, 03/09/12.
Animal Source Texas, Inc., AWA-12-0039, 03/12/12.
Pharma Cemie, Inc., AWA-12-0288, 03/28/12.
John W. Pugh, an individual, AWA-12-0174, AWA-11-0316, 04/09/12.
Cole Brothers Circus, Inc., a Florida corporation, d/b/a Cole Bros., Cole Bros. Circus, and Clyde Beatty Circus, AWA-12-0353, AWA-11-0316, 04/09/12.
Sandy Greenly, AWA-12-0352, AWA-11-0072, 04/09/12.
Crystal Greenly, an individual, AWA-12-0422, AWA 11-0072, 05/04/12.
Zoological Consortium of Maryland, Inc., a Maryland corporation, d/b/a Catoctin Wildlife Preserve and Zoo, AWA-12-0165, 05/29/12.
Safari's Inc., an Oklahoma corporation, d/b/a Safari's Sanctuary; & Lori Ensign, an individual, AWA-07-0122, 05/29/12.
Safari's Inc., an Oklahoma corporation, d/b/a Safari's Sanctuary, & Lori Ensign, a/k/a Lori Ensign Scroggins, an individual, AWA-12-0340, 05/29/12.
Lori Ensign, a/k/a Lori Ensign Scroggins, AWA-12-0351, 05/29/12.
Lori Ensign, a/k/a Lori Ensign Scroggins, AWA-12-0457, 05/29/12.

FEDERAL CROP INSURANCE ACT

Jeffrey Lee Robertson, FCIA-11-0377, 05/08/12.

FEDERAL MEAT INSPECTION ACT / POULTRY PRODUCTS INSPECTION ACT

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Agreco R.F. Goderz GMBH, OFPA-10-0381, 05/02/12.
Richard F. Goderz, OFPA-12-0456, OFPA-10-0381, 05/02/12.