

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	AWG Docket No. 10-0201
Keith Quakenbush, n/k/a)	
Keith William Grier,)	
)	
Petitioner)	Decision and Order

1. The hearing, by telephone, began July 13, 2010; resumed August 6, 2010; resumed again August 27, 2010; and concluded September 10, 2010. Mr. Keith William Grier, formerly known as Keith Quakenbush, the Petitioner (“Petitioner Grier”), represented himself (appeared *pro se*). Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and was represented by Mr. Gene Elkin.

2. Petitioner Grier and USDA Rural Development were both extraordinarily helpful in assisting me in my attempt to determine the facts. I thank both Petitioner Grier and USDA Rural Development for their patience with my attempts to learn more about Chase Manhattan Mortgage Corporation’s accounting for the proceeds from the apparent \$84,500.00 sale on May 17, 2000 of the Williamson County, Texas residence that was Petitioner Grier’s prior to foreclosure. I thank both for their cooperation with one another and with me, including their work trying to obtain additional documentation (Petitioner Grier with Chase Manhattan Mortgage Corporation; USDA Rural Development with its Texas offices).

3. The address for USDA Rural Development for this case is

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4. I admitted into evidence USDA Rural Development Exhibits RX-1 through RX-5, together with the Narrative, Witness & Exhibit List (filed July 2, 2010), and the testimony of Mr. Elkin. I admitted into evidence Petitioner Grier Exhibits PX-1 through PX-14 (filed timely by email and eventually placed in the record file on July 13, 2010 and on August 6, 2010), and the testimony of Petitioner Grier.

Summary of the Facts Presented

5. In 1999 Petitioner Grier defaulted on loans he had borrowed in 1997 to purchase a residence in Williamson County, Texas. The first mortgage was Chase Manhattan Mortgage Corporation's ("Chase's"). The second mortgage was USDA Rural Development's. Chase foreclosed and apparently then sold the residence for \$84,500.00 on May 17, 2000. PX-4.

6. Chase notified Petitioner Grier that his Chase loan was "paid in full effective June 13, 2000." PX-5. Chase paid to USDA Rural Development, probably in July 2000, \$20,048.66. RX-3. Without an accounting from Chase, I do not understand Chase's application of the sale proceeds. Despite the best efforts of both parties, we were unable to obtain an accounting from Chase. (Chase's foreclosure and subsequent sale were longer than 10 years ago.)

7. When the \$20,048.66 paid by Chase was applied to Petitioner Grier's USDA Rural Development loan (RX-1), Petitioner Grier still owed USDA Rural Development a balance of \$37,134.44 (as of July 6, 2000). *See* USDA Rural Development Exhibits and Narrative, especially RX-3.

8. Petitioner Grier paid additional amounts, chiefly through Treasury *offset* payments (income tax refunds that went to USDA Rural Development instead of to Petitioner Grier), resulting in a balance owed to USDA Rural Development of **\$28,917.50** (as of July 13, 2010) in repayment of the "leveraged loan," that is, the loan that was secured by a second mortgage and is now unsecured ("the debt") (*see* USDA Rural Development Exhibits, esp. RX-3 and RX-4).

9. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on \$28,917.50 would increase the current balance by \$8,096.90, to \$37,014.40. RX-4.

10. There are peculiarities which lead to me to conclude that no further collection of the debt should be or will be authorized. *See* Discussion.

Discussion

11. The most significant peculiarity is that Chase paid USDA Rural Development only

\$20,048.66. Chase was required to pay USDA Rural Development all remaining proceeds, once Chase had been made whole. With an apparent sale price of \$84,500.00 on May 17, 2000 (PX-4), I'd have expected more to be paid to USDA Rural Development. Chase reported to the Internal Revenue Service on Form 1099-C, "debt canceled of \$43,303.12," on 01/05/99, including "interest of \$2,317.03" PX-8. [Chase reported to the IRS that the "Fair market value of property" was \$87,000.00. PX-8.] *See also* PX-9. Chase of course had foreclosure expenses and also sale expenses, but did those expenses exceed \$21,000.00? With no accounting for Chase's application of the sale proceeds, this peculiarity makes me uneasy about any further debt collection from Petitioner Grier.

12. Another peculiarity that gives me pause is the October 2004 communication to Petitioner Grier about the debt, PX-10 (Suzanne Renda's letter), and PX-11 (USDA Rural Development's "Response to Request for Additional Information"). PX-11 was prepared by USDA Rural Development and contains numerous anomalies, which at the very least were misleading to Petitioner Grier. PX-11 is, in my view, a "format," inappropriately completed, which, for example, refers to funds from the sale, indicating that the principal balance before the sale was \$36,775.37 (that amount is closer to the principal balance after the sale); and refers to funds received on July 13, 2001 as if they were funds received from the sale. [The funds from Chase were likely received at least a year earlier.] I think PX-11 is a flawed explanation that has nothing to do with sale proceeds, and accounts instead for Treasury *offset* payments received 2001 through 2004, received beginning a year following application of the sale proceeds. I rely on RX-3 as being accurate and reliable; all the USDA Rural Development evidence appears to me to be accurate and reliable. There is no wrongdoing by USDA Rural Development. PX-11 is not part of USDA Rural Development's evidence, and is confusing. PX-11 was prepared by USDA Rural Development in 2004 and was communicated to Petitioner Grier in 2004 and is a further peculiarity that confirms to me that no further debt collection from Petitioner Grier should be authorized.

Findings, Analysis and Conclusions

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

14. Petitioner Grier did owe the debt described in paragraphs 8 and 9. Nevertheless, given the peculiarities of this case (*see* Discussion), no further debt collection from Petitioner Grier should be authorized.

15. No refund to Petitioner Grier of monies already collected is appropriate, and no refund to Petitioner Grier is authorized.

16. No garnishment is authorized; no further repayment of the debt through *offset* of Petitioner Grier's income tax refunds or other Federal monies payable to the order of Mr. Grier is authorized; no form of further debt collection from Petitioner Grier is authorized.

Order

17. No further collection of the debt should be or will be authorized.

18. USDA Rural Development is requested to *cancel* the remaining debt, consistent with this Decision.

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

Done at Washington, D.C.
this 16th day of September 2010

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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