

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) **AWG Docket No. 11-0078**
Juan Valdez)
)
Petitioner) **Decision and Order**

1. The hearing by telephone was held as scheduled on February 15 and May 3, 2011. Mr. Juan M. Valdez, the Petitioner (“Petitioner Valdez”), participated, representing himself (appeared *pro se*).

2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and was represented by Mary E. Kimball. The address for USDA Rural Development for this case is

Mary E. Kimball, Branch Accountant
USDA / RD New Program Initiatives Branch
Bldg 105 E, FC-22, Post D-2
4300 Goodfellow Blvd
St Louis MO 63120-1703

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Summary of the Facts Presented

3. Petitioner Valdez owes to USDA Rural Development a balance of **\$178,826.32** (as of January 15, 2011) in repayment of a United States Department of Agriculture / Rural Housing Service ***Guarantee*** (see RX 2, esp. p. 2) for a loan made on April 24, 2007 by JP Morgan Chase Bank, for a home in California, the balance of which is now unsecured (“the debt”).¹ See USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List

¹ Rural Housing Service is a part of USDA Rural Development.

(filed January 24, 2011), which are admitted into evidence, together with the testimony of Mary Kimball.

4. This *Guarantee* establishes an **independent** obligation of Petitioner Valdez, “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 2, 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 **\$178,826.32** would increase the current balance by \$50,071.37, to \$228,897.69. *See* USDA Rural Development Exhibits, esp. RX 6.

6. The amount Petitioner Valdez borrowed from JP Morgan Chase Bank was \$232,560.00 on April 24, 2007. RX 1. Foreclosure was initiated in 2008. RX 3, p. 3. The liquidation value of the home was estimated at \$65,000.00. RX 3, p. 4. USDA Rural Development paid JP Morgan Chase Bank \$185,670.37 on May 20, 2009. RX 3, p. 7. The home sold for a higher price than the estimated liquidation value; the home sold for \$71,500.00 on June 19, 2009. *See* Narrative. This permitted USDA Rural Development to recover \$6,844.05 of what it had paid. RX 4. This left **\$178,826.32** (*see* RX 4) as the amount USDA Rural Development had paid, and the amount USDA Rural Development recovers from Petitioner Valdez under the *Guarantee*.

7. Petitioner Valdez testified that he was lied to, regarding two aspects of his purchase of the home. He testified that he had been told that the taxes were included in his monthly mortgage payments to JP Morgan Chase Bank, and he then learned they were not. He did not have the money to pay any additional amounts. He testified that he had been told he would get \$5,000.00 back and was counting on that to buy furniture; he got only \$2,000.00 back. Petitioner Valdez faults the real estate professionals, such as the mother-daughter real estate team, whom he trusted. Further, he tried to do a short sale. The due date of the last payment he made was September 1, 2007. RX 3, p. 2. Losing the home, his first home, and being in such a hole, financially, have been very hard on him.

8. Petitioner Valdez did not file a Consumer Debtor Financial Statement or any pay stubs, but his testimony is admitted into evidence. Petitioner Valdez testified that he works for Home Depot and ordinarily works a second job. Health issues such as an ulcer (stomach) have caused him to cut back on hours worked, and he has expenses for antibiotics. Petitioner Valdez pays the reasonable and necessary living expenses for not only himself but also his 8 year-old son and his long-time (16 years) girlfriend, who helps

him with his son, who is autistic. Without the Consumer Debtor Financial Statement and pay stubs, I do not have the evidence necessary to evaluate the factors to be considered under 31 C.F.R. § 285.11. Nevertheless, based on Petitioner Valdez's testimony, through November 2011, NO garnishment is authorized, to give Petitioner Valdez time to prepare for coping with "the debt" (see paragraph 3). Beginning December 1, 2011, I must presume that Petitioner Valdez can withstand garnishment up to 15% of Petitioner Valdez's disposable pay without creating financial hardship. 31 C.F.R. § 285.11.

9. Petitioner Valdez is responsible and able to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

10. NO garnishment is authorized through November 2011. Beginning December 1, 2011, garnishment up to 15% of Petitioner Valdez's disposable pay is authorized. See paragraphs 7 & 8. I encourage **Petitioner Valdez and the collection agency to negotiate promptly** the repayment of the debt. Petitioner Valdez, this will require **you** to telephone the collection agency after you receive this Decision. Petitioner Valdez, you may request that you be permitted to compromise the debt for an amount you are able to pay, to settle the claim for less. You may ask that you be given consideration particularly since you provide for your 8-year old son with autism. The toll-free number for you to call is **1-888-826-3127**.

Findings, Analysis and Conclusions

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

12. Petitioner Valdez owes the debt described in paragraphs 3, 4, 5 and 6.

13. **NO garnishment is authorized through November 2011.** Because I do not have evidence such as a Consumer Debtor Financial Statement and pay stubs, beginning December 1, 2011, I must presume that Petitioner Valdez can withstand garnishment up to 15% of Petitioner Valdez's disposable pay without creating financial hardship. 31 C.F.R. § 285.11.

14. This Decision does not prevent repayment of the debt through *offset* of Petitioner Valdez's **income tax refunds** or other **Federal monies** payable to the order of Mr. Valdez.

Order

15. Until the debt is repaid, Petitioner Valdez 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).

16. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment through November 2011. Beginning December 1, 2011, garnishment is authorized, up to 15% of Petitioner Valdez's disposable pay. 31 C.F.R. § 285.11.

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

Done at Washington, D.C.
this 5th day of May 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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