

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	AWG Docket No. 11-0196
Robyn Davis,)	
)	
Petitioner)	Decision and Order

1. The hearing was held by telephone on June 28, 2011. Ms. Robyn L. Davis, formerly Robyn L. Edwards, the Petitioner (“Petitioner Davis”) participated, represented by Dennis Atteberry, Esq. and Cara Pratt-Fleming, Esq. Petitioner Davis’s husband, Mr. Jacob Davis, was present. [Petitioner Davis’s husband is **not** liable to repay “the debt” described in paragraph 3.]

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

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USDA / RD New Program Initiatives Branch
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Summary of the Facts Presented

3. Petitioner Davis owes to USDA Rural Development a balance of **\$29,410.50** (as of May 4, 2011, *see* RX 11), 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 Davis borrowed, with the co-borrower, her then-husband, to buy a home in Illinois. *See* USDA Rural Development Exhibits RX 1 through RX 12 together with the Narrative, Witness & Exhibit List

(filed May 17, 2011); and the testimony of Mary Kimball, all of which I admit into evidence.

4. I admit into evidence Petitioner Davis's testimony, together with Petitioner Davis's Exhibits PX 1 through PX 12, which include her "Consumer Debtor Financial Statement," together with her Narrative (filed June 3, 2011), her Supplemental Report and Narrative and PX 13 (filed June 22 and June 27, 2011), and her pay stubs filed June 30, 2011, together with Petitioner Davis's Hearing Request and accompanying documentation.

5. Petitioner Davis's co-borrower, her former husband, was required to and failed to pay the debt on the home. PX 5, pp. 1, 2; Petitioner Davis's Narrative. Petitioner Davis's divorce from the co-borrower was in October 2005. PX 5, p. 1. The "Due Date of Last Payment Made" was December 1, 2007. RX 5, p. 3. The "Date Eviction Started" was August 10, 2009; the "Date Eviction Completed" was October 8, 2009. RX 5, p. 3. Although Petitioner Davis may pursue the co-borrower for monies collected from her on the debt, that does not prevent USDA Rural Development from collecting from her under the *Guarantee*. RX 3.

6. The *Guarantee* (RX 3) establishes an **independent** obligation of Petitioner Davis, "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 **\$29,410.50** would increase the current balance by \$8,234.94, to \$37,645.44. RX 11.

8. Petitioner Davis's Narrative filed June 3, 2011 explains that the lender Chase had Petitioner Davis's correct address and failed to use it. Petitioner Davis: "I had not been given any notification of delinquencies or opportunities to rectify the deficiency. When the process was initiated, my summons was reported as hand delivered to an address that the lender knew was not mine to a person that was not me. Chase did not request proper service by publication; rather they falsely certified that I was successfully notified through substitute service. Afterwards, the foreclosure occurred and a default judgment was granted against me. Chase then requested reimbursement from the USDA for default on the guaranteed loan." Petitioner Davis's Narrative, p. 1.

9. The Order Approving Sale was entered on April 9, 2009. If the lender Chase had effected service properly on Petitioner Davis, not only in the foreclosure action but also in all delinquency notices (all through 2008, for example, and into 2009), could USDA Rural Development have avoided the loss here? If Petitioner Davis had been given timely notification of delinquencies and opportunities to rectify the deficiency, would she have rectified the deficiency? Would she have prevented the lender's loss; therefore the lender's claim and USDA Rural Development's loss? Possibly so. USDA Rural Development maintains that Petitioner Davis's remedy would have to be pursued against the lender Chase. Petitioner Davis did achieve the Agreed Order and Partial Release entered January 20, 2011. PX 6. But the lender Chase did not need to concern itself, because it had already looked to USDA Rural Development to be made whole under the *Guarantee*, and its claim had been paid, \$31,341.50, nearly a year before, on February 12, 2010. RX 5, p. 7.

10. USDA Rural Development's evaluation of the lender's claim was unrelated to the lender's action to obtain a personal deficiency. USDA Rural Development's evaluation of the lender's claim is summarized in RX 5. USDA Rural Development evaluated, among other things, timeliness at various stages of the proceeding; the appraised values of the security (\$22,000.00 "As Is" Appraised Value; \$45,000.00 "As Is" BPO [broker price opinion]; and \$38,000.00 RHS Liquidation Appraised Value, *see* RX 4); and the reasonableness of costs and fees. USDA Rural Development's review of the lender's claim and determination of loss (*see* RX 5), finalized on February 12, 2010 (RX 5, p. 7), determined the lender's loss to be \$31,341.50, which is the amount USDA Rural Development paid the lender and then began to collect from Petitioner Davis and her co-borrower. (USDA has since received one payment from Treasury totaling \$1,931.00, which leaves the balance of **\$29,410.50**.)

11. Petitioner Davis is NOT liable under the personal deficiency judgment entered effective April 9, 2009 against the co-borrower. *See* PX 5 and PX 6, including the Agreed Order and Partial Release entered January 20, 2011; included also in Petitioner Davis's Hearing Request and accompanying documentation. Petitioner Davis's success in obtaining deletion of any reference to a personal deficiency entered against her does not, however, prevent USDA Rural Development from collecting from her. 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.

12. Petitioner Davis directs my attention to 7 C.F.R. § 1980.301, *et seq.*, especially 7 C.F.R. § 1980.308, which she asserts renders the loan note guarantee unenforceable because of negligent servicing, specifically here, the lender's failure to effect service on Petitioner Davis in the foreclosure action. After careful consideration of 7 C.F.R. § 1980.308, I find that, if USDA Rural Development were to seek a determination against the lender Chase

that the loan note guarantee is unenforceable here, such action would inure to Petitioner Davis's benefit only insofar as USDA Rural Development recovered from the lender Chase some or all of the \$31,341.50.

13. Petitioner Davis asks that I follow the lead of my colleague, Chief Judge Peter M. Davenport, in PX 9, PX 10, and PX 11, and find that USDA Rural Development paid an entity not then the holder of the note. Under these circumstances, I do not so find. Here, I find that the original lender was Draper and Kramer Mortgage Corp. RX 1. The Assignment of Mortgage from Draper and Kramer Mortgage Corp. was to JP Morgan Chase Bank, N.A. RX 2. The servicing lender, allowed to foreclose in a judicial foreclosure and given the Order Approving Sale and Order of Possession on April 9, 2009, was Chase Home Finance LLC. See PX 6. USDA Rural Development paid the claim of Chase Home Finance LLC. RX 5. Additionally, but not essential here, I take official notice that JP Morgan Chase Bank, N.A. is the parent company of Chase Home Finance LLC.

14. Petitioner Davis summarizes, in part:

“I don't know what else I could have done. I literally woke up one day (August 10, 2010) and everything seemed fine, went to the post office and found out I was being pursued for \$31,341.50 for something I knew nothing about, did not cause and did not get the opportunity to prevent.

If I had been afforded the chance, I would have taken every step possible to prevent this foreclosure. Since Chase chose not to provide me with that right, I believe and the law supports that they forfeited their right to collect on the foreclosure. Whether their actions were negligent or fraudulent, I don't know, but either way they broke the law and created an illegal foreclosure that could have been prevented. While I understand that a payment was made, by the USDA to Chase, it shouldn't have.”

15. Petitioner Davis has presented her case with excellence, and I agree with her that her legal recourse against her co-borrower for monies collected from her on the debt seems inadequate. Once she entered into the borrowing transaction with her co-borrower, certain responsibilities were fixed that were addressed but not erased by the divorce orders, and that were addressed but not erased by the Agreed Order and Partial Release. PX 6. Thus, I conclude that Petitioner Davis still owes the balance of **\$29,410.50** (excluding potential collection fees), as of May 4, 2011. Here, even where there is NO judgment entered against Petitioner Davis, and NO personal deficiency entered against Petitioner Davis, USDA Rural Development may still collect administratively, pursuant to the *Guarantee*.

16. Petitioner Davis and her husband Jacob Davis, who is **not** liable to repay the debt, support themselves and two children, with some child support help (sometimes sporadic)

from her co-borrower and former husband, Mr. Edwards. Even when Mr. Edwards pays the full amount of ordered child support (for one of the two children in Petitioner Davis's household), the child support amounts to less than half of Petitioner Davis's daycare expense. Petitioner Davis is paid every two weeks, working in health care as a Customer Advocate. She makes [REDACTED] per hour, plus benefits. She occasionally works some overtime, but my calculations do not rely on overtime. Petitioner Davis's gross pay every two weeks, excluding overtime, is [REDACTED] which is about [REDACTED] per month. From gross pay, I calculate disposable pay, which 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. In Petitioner Davis's case, the only deduction that I have not allowed in calculating her disposable income is her 401K deduction. After adding back in the 401K deduction, and taking into account that certain health care deductions come out of only one pay check each month (12 paychecks a year deduct roughly [REDACTED] more), I find that Petitioner Davis's disposable pay (within the meaning of 31 C.F.R. § 285.11) is roughly [REDACTED] per month (*see* pay stubs filed June 30, 2011). Although garnishment at 15% of Petitioner Davis's disposable pay could yield roughly [REDACTED] per month in repayment of the debt, she cannot withstand garnishment in that amount without financial hardship.

17. Petitioner Davis has the support of her husband, and some child support from her former husband (the court-ordered amount is [REDACTED] per month), but even taking this into account, her reasonable and necessary expenses for her household of four, including her two children, currently prevent her from paying 15% of her disposable pay. Daycare alone costs [REDACTED] per month, which is 40% of her disposable pay. Her half of the mortgage and car payments would take another 40% of her disposable pay. Her half of the utilities, vehicle insurance, gasoline and vehicle repairs, would take the remainder of her disposable pay. Food and clothing and out-of-pocket medical expenses, among other things, remain to be paid. So even when her husband's support and the child support from her former husband are factored in, Petitioner Davis's disposable pay (within the meaning of 31 C.F.R. § 285.11) does **not** currently support garnishment and **no** garnishment is authorized through **August 2013**. To prevent hardship, potential garnishment to repay "the debt" (*see* paragraph 3) must be limited to **0%** of Petitioner Davis's disposable pay through **August 2013**; then, beginning no sooner than September 2013, following review of Petitioner Davis's financial circumstances to determine what amount of garnishment she can withstand without financial hardship, garnishment up to 15% of Petitioner Davis's disposable pay is authorized. 31 C.F.R. § 285.11.

18. Petitioner Davis may choose to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

19. **NO garnishment is authorized through August 2013.** I encourage **Petitioner Davis and the collection agency** to **negotiate promptly** the repayment of the debt. Petitioner Davis, 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**. You may want to request apportionment of debt between you and the co-borrower. 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.

Findings, Analysis and Conclusions

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

21. Petitioner Davis owes the debt described in paragraphs 3, 6 and 7.

22. **NO garnishment is authorized through August 2013**, because garnishment would create financial hardship. 31 C.F.R. § 285.11.

23. **Beginning no sooner than September 2013**, following review of Petitioner Davis's financial circumstances to determine what amount of garnishment she can withstand without financial hardship, **garnishment up to 15% of Petitioner Davis's disposable pay is authorized**. 31 C.F.R. § 285.11.

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

Order

25. Until the debt is fully paid, Petitioner Davis 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).

26. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment through **August 2013**. **Beginning no sooner than September 2013**, following review of Petitioner Davis's financial circumstances to determine what

amount of garnishment she can withstand without financial hardship, **garnishment up to 15% of Petitioner Davis'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, **including both Petitioner Davis AND her attorney.**

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

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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