

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) **AWG Docket No. 11-0169**
Paul W. Dotson)
)
Petitioner) **Decision and Order**

1. The hearing by telephone was held as scheduled on May 19 and June 29, 2011. Mr. Paul W. Dotson, the Petitioner (“Petitioner Dotson”), 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
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Summary of the Facts Presented

3. Petitioner Dotson owes to USDA Rural Development a balance of **\$42,190.21** (as of April 6, 2011) in repayment of a United States Department of Agriculture / Rural Development / Rural Housing Service **Guarantee** (see RX 2, esp. p. 2) for a loan made on February 2, 2005 by Countywide Mortgage Co., an Ohio Corporation, for a home in Ohio, the balance of which is now unsecured (“the debt”). See USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed April 22, 2011), which are admitted into evidence, together with the testimony of Mary Kimball.

4. This *Guarantee* establishes an **independent** obligation of Petitioner Dotson, “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 **\$42,190.21** would increase the current balance by \$12,657.06, to \$54,847.27. *See* USDA Rural Development Exhibits, esp. RX 9.

6. The amount Petitioner Dotson borrowed from Countywide Mortgage Co. was \$64,900.00 on February 2, 2005. RX 1. The Note was assigned to Huntington National Bank in 2005. RX 1, p. 3. The due date of the last payment made was June 1, 2005. RX 3, p. 2. Foreclosure was initiated on November 18, 2005. The home appraised for \$35,000.00 as of September 21, 2008, in the appraisal done for USDA Rural Development. RX 6. USDA Rural Development paid Huntington National Bank \$46,045.71 on October 20, 2008 (the amount was \$51.00 more, but there was a \$51.00 recovery). RX 3, p. 7, RX 4. Thus \$46,045.71, the amount USDA Rural Development paid, is the amount USDA Rural Development recovers from Petitioner Dotson under the *Guarantee*.

7. Payments made in 2011 to USDA Rural Development have reduced the balance to **\$42,190.21**. *See* RX 8 plus Narrative for detail.

8. Petitioner Dotson’s Exhibits were filed on May 17, 2011 (Consumer Debtor Financial Statement), and July 18, 2011 (wage stub), and are admitted into evidence, together with his testimony, and his Hearing Request dated February 28, 2011. Petitioner Dotson pays reasonable and necessary living expenses for not only himself but also his wife. Petitioner Dotson pays child support for his 9-year old son Patrick, which is deducted from his pay, more than [REDACTED] per month. Petitioner Dotson contributes toward the support of his 19-year old stepson and his brother. Petitioner Dotson’s gross pay is about [REDACTED] per month; between [REDACTED] and [REDACTED] per hour. 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 Dotson’s case, the only deduction that I have not allowed when calculating his disposable income, is his child support deduction. After adding back in the child support deduction, I find that Petitioner Dotson’s disposable pay (within the meaning of 31 C.F.R. § 285.11) is roughly [REDACTED] per month (*see* pay stub filed July 18, 2011).

9. Although garnishment at 15% of Petitioner Dotson's disposable pay could yield roughly \$300.00 per month in repayment of the debt, he cannot withstand garnishment in that amount without financial hardship. Petitioner Dotson's wife has residuals from being in a rollover motor vehicle accident relatively recently; she was laid off in August 2010. Petitioner Dotson's stepson is unemployed. Petitioner Dotson's brother is not working. Petitioner Dotson had back surgery last year. There are unpaid medical bills not included on his Consumer Debtor Financial Statement. He allowed nothing for gasoline and auto repairs on his Consumer Debtor Financial Statement. The expenses on his Consumer Debtor Financial Statement are understated. Petitioner Dotson'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 Dotson's disposable pay through **August 2013**; then, beginning no sooner than September 2013, following review of Petitioner Dotson's financial circumstances to determine what amount of garnishment he can withstand without financial hardship, garnishment up to 15% of Petitioner Dotson's disposable pay is authorized. 31 C.F.R. § 285.11.
10. Petitioner Dotson may want to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

11. NO garnishment is authorized through **August 2013**. *See* paragraphs 8 and 9. I encourage **Petitioner Dotson and the collection agency to negotiate promptly** the repayment of the debt. Petitioner Dotson, this will require **you** to telephone the collection agency after you receive this Decision. Petitioner Dotson, 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. The toll-free number for you to call is **1-888-826-3127**.

Findings, Analysis and Conclusions

12. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Dotson and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.
13. Petitioner Dotson owes the debt described in paragraphs 3, 4, 5, 6 and 7.
14. Petitioner Dotson cannot currently withstand garnishment in any amount without creating financial hardship. 31 C.F.R. § 285.11. **NO garnishment is authorized through August 2013**.

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

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

Order

17. Until the debt is repaid, Petitioner Dotson 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 **NOT** authorized to proceed with garnishment through **August 2013. Beginning no sooner than September 2013**, following review of Petitioner Dotson's financial circumstances to determine what amount of garnishment he can withstand without financial hardship, **garnishment up to 15% of Petitioner Dotson'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.

Done at Washington, D.C.
this 18th day of July 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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