

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	AWG Docket No. 11-0293
Heather Tracey,)	
)	
Petitioner)	Decision and Order

1. The hearing was held by telephone on September 21, 2011. Ms. Heather M. Tracey, the Petitioner (“Petitioner Tracey”) participated, representing herself (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 Ms. Mary 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 Tracey owes to USDA Rural Development a balance of **\$35,316.48** (as of July 15, 2011, *see* RX 10), 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 in 2004, the balance of which is now unsecured (“the debt”). Petitioner Tracey borrowed, with the co-borrower, her then-husband, to buy a home in Michigan. *See* USDA Rural Development Exhibits RX 1 through RX 10 together with the Narrative, Witness & Exhibit List (filed August 5, 2011); and the testimony of Mary Kimball, all of which I admit into evidence.

4. I admit into evidence Petitioner Tracey's testimony, together with Petitioner Tracey's "Consumer Debtor Financial Statement" filed September 21, 2011, together with Petitioner Tracey's Hearing Request including accompanying documentation.
5. The *Guarantee* (RX 2) establishes an **independent** obligation of Petitioner Tracey, "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.
6. Petitioner Tracey's co-borrower, her former husband, was required to and failed to pay the debt on the home. *See* Petitioner Tracey's Hearing Request. Petitioner Tracey's divorce from the co-borrower was in 2008, but she had moved out of the home with her two children into her parents' home in March 2007. Petitioner Tracey's testimony. The "Due Date of Last Payment Made" was October 1, 2007. RX 6, p. 3. Although Petitioner Tracey 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 2.
7. Petitioner Tracey's legal recourse against her co-borrower for monies collected from her on the debt does seem inadequate. But once she had entered into the borrowing transaction with her co-borrower, certain responsibilities were fixed that were addressed but not erased by the divorce orders. Thus, I conclude that Petitioner Tracey still owes the balance of **\$35,316.48** (excluding potential collection fees), as of July 15, 2011, and that USDA Rural Development may collect that amount from her, pursuant to the *Guarantee*. [The debt is her co-borrower's and her joint-and-several obligation.]
8. At the foreclosure sale on April 11, 2008, the lender was not outbid, so the "Sheriff's Deed on Mortgage Sale" was issued to JP Morgan Chase Bank, N.A. USDA Rural Development's evaluation of the lender's claim is summarized in RX 6. USDA Rural Development evaluated, among other things, timeliness at various stages of the proceeding; and the appraised values of the security: \$60,000.00 "As Is" Appraised Value; \$35,900.00 "As Is" BPO [broker price opinion]; and \$44,000.00 RHS Liquidation Appraised Value. RX 6, esp. p. 4. USDA Rural Development's payment to JP Morgan Chase Bank, N.A. was based on the Liquidation Appraisal valuing the home at \$44,000.00. RX 5. [The lender did not sell the home within the time allowed.]
9. USDA Rural Development paid \$43,267.37 on January 19, 2010 to JP Morgan Chase Bank, N.A., under the *Guarantee*. RX 6, p. 7. No interest has accrued since January 19, 2010. [The lender eventually sold the home for \$31,000.00 on June 18, 2010, but the

difference between the Liquidation Appraisal value and the sales price was a loss borne by the lender.]

10. USDA Rural Development's review of the lender's claim determined the lender's loss to be \$43,267.37 (RX 6, p. 7), which is the amount USDA Rural Development paid the lender and then began to collect from Petitioner Tracey and her co-borrower. USDA has since received two payments from Treasury netting \$7,950.89, *see* RX 9, which leaves the balance of **\$35,316.48**.

11. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$35,316.48** would increase the current balance by \$9,888.61, to \$45,205.09. RX 10.

12. Petitioner Tracey supports two young children in addition to herself, with the help of her parents. She is currently not employed. If she were employed, I would be determining whether she can withstand garnishment in the amount of 15% of her disposable pay without financial hardship. [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.] 31 C.F.R. § 285.11. Since she is not employed and will need considerable time to stabilize financially, **NO garnishment is authorized through October 2012**.

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

Discussion

14. **NO garnishment is authorized through October 2012**. Petitioner Tracey, you may choose to negotiate the repayment of the debt with Treasury's collection agency. Petitioner Tracey, this will require **you** to telephone Treasury's collection agency. 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

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

16. Petitioner Tracey owes the debt described in paragraph 3 and paragraphs 5 - 11.

17. **NO garnishment is authorized through October 2012**, because garnishment would create financial hardship. 31 C.F.R. § 285.11.

18. **Beginning no sooner than November 2012**, following review of Petitioner Tracey's financial circumstances to determine what amount of garnishment she can withstand without financial hardship, **garnishment up to 15% of Petitioner Tracey's disposable pay is authorized**. 31 C.F.R. § 285.11.

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

Order

20. Until the debt is fully paid, Petitioner Tracey 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 **NOT** authorized to proceed with garnishment through **October 2012**. **Beginning no sooner than November 2012**, following review of Petitioner Tracey's financial circumstances to determine what amount of garnishment she can withstand without financial hardship, **garnishment up to 15% of Petitioner Tracey'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 23rd day of September 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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