

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) **AWG Docket No. 11-0294**
Deborah A. Crosby,)
)
Petitioner) **Decision and Order**

1. The hearing by telephone was held on September 1, 2011. Deborah A. Crosby, the Petitioner (“Petitioner Crosby”), participated, represented by Thomas F. Donahue, Esq.
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. USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed August 5, 2011), plus Mary Kimball’s testimony, are admitted into evidence.
4. Petitioner Crosby’s Hearing Request and attached statements (including Mr. Donahue’s letters dated April 8, 2011 and May 12, 2011 and June 3, 2011), plus Petitioner Crosby’s Consumer Debtor Financial Statement, plus Narrative, Witness List and Exhibit List, including legal authority (filed August 18 and August 19, 2011), plus Petitioner Crosby’s testimony, are admitted into evidence.

5. Petitioner Crosby owes to USDA Rural Development a balance of **\$6,858.66** (as of July 14, 2011), in repayment of a \$33,000.00 United States Department of Agriculture Farmers Home Administration loan¹ made in 1993 for a home in Texas, the balance of which is now unsecured (“the debt”). *See* especially RX 6 and RX 7 for the loan balance.

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$6,858.66** would increase the current balance by \$1,920.42, to \$8,779.08.

7. About four years after the loan was made, the loan was reamortized, in 1997. RX 4. The loan had become delinquent, and reamortization made the loan current, by adding the delinquent amount to the principal balance. The principal amount due on the account became \$33,136.53. The reamortization did not change the amounts owed.² Petitioner Crosby was not able to keep the loan current; a Notice of Default was sent to her on June 26, 1999. RX 5.

8. In July 1999, Petitioner Crosby would have been able to stop the foreclosure sale by paying the \$1,307.00 in arrears. RX 5, p. 1. Petitioner Crosby failed to do so. The foreclosure sale was held on January 4, 2000. By the time of the foreclosure sale, \$2,123.94 in interest had accrued, and \$3,593.49 in fees. The \$38,691.78 due prior to the foreclosure sale included:

\$ 32,974.35	principal
2,123.94	accrued interest
<u>3,593.49</u>	fees (<i>ie</i> , real estate taxes, insurance)
\$ 38,691.78	
=====	

RX 6.

9. The foreclosure sale on January 4, 2000 yielded \$29,500.00, which reduced the

¹ Petitioner Crosby through counsel challenges the copy of the Promissory Note in evidence (RX 1), because it is not the original and does not bear Petitioner Crosby’s signature. The argument is not persuasive, particularly in light of the reamortization (*see* “Reamortized” written across the face of it); the Real Estate Deed of Trust for Texas (RX 2) evidencing the Promissory Note; and the Reamortization document signed by Petitioner Crosby in March 1997 (RX 4).

² Petitioner Crosby through counsel challenges the reamortization for permitting interest to accrue on what had previously been interest. I find the reamortization to have benefitted Petitioner Crosby by permitting her to remain in her home longer, and further, there was no restriction on such a modification.

\$38,691.78 amount owed, to \$9,191.78. No interest has accrued since the foreclosure sale on January 4, 2000, and collections since then (Treasury *offsets* in 2007 and 2008,³ plus garnishments in 2011) have paid down the debt by \$2,333.12, reducing the balance to **\$6,858.66**. *See* RX 6, esp. p. 2.

10. Petitioner Crosby testified that she is unemployed; that the security company she had been working for, changed her assignment to a job that she could not do. She lost her medical insurance, and her \$12.00-per-hour wage was reduced by \$3.00 per hour. She testified that she needs a hip replacement, uses a cane, has a difficult time walking, and could not do a driving job. She testified that her reasonable and necessary living expenses (\$1,657.30 per month) are paid by a friend. Petitioner Crosby indicated that she needs to pay delinquent taxes from 2009. Garnishment at this time would result in **financial hardship** to Petitioner Crosby and is NOT currently authorized, through October 2012. Beginning no sooner than November 2012, following review of Petitioner Crosby's financial circumstances to determine what amount of garnishment she can withstand without financial hardship, garnishment up to 15% of Petitioner Crosby's disposable pay is authorized. 31 C.F.R. § 285.11.

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

Discussion

12. Garnishment is not currently authorized. *See* paragraph 10. Petitioner Crosby, as your attorney indicated during the hearing, you may want to appeal this Decision in U.S. District Court. You may want to consult a lawyer with bankruptcy expertise. You may want to negotiate with Treasury's collection agency regarding disposition of the debt. Petitioner Crosby, such negotiation would require **you** to telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Crosby, 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. You may want to have your attorney or anyone else with you on the line if you call.

³ Petitioner Crosby through her attorney emphasizes that no collection occurred between 2000 and 2007, arguing that the six-year statute of limitations set out in 28 U.S.C. § 2415(a) bars collection here, citing *United States v. Alvarado*, 5 F.3d 1425 (11 Cir. 1993). The argument is not persuasive, because an agency of the United States government collecting administratively has rules that differ from those that may have applied to judicial proceedings. The ten-year statute of limitations was eliminated in 2008. *See* amendment to 31 U.S.C. § 3716(e) made by section 14219 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246 (122 Stat. 1651) that became effective on June 18, 2008.

Findings, Analysis and Conclusions

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

14. Petitioner Crosby owes the debt described in paragraphs 5 through 9.

15. Garnishment at this time would result in **financial hardship** to Petitioner Crosby and is NOT authorized, through October 2012. 31 C.F.R. § 285.11. I am NOT, however, ordering any amounts already collected through garnishment of Petitioner Crosby's pay prior to implementation of this Decision to be returned to Petitioner Crosby.

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

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

Order

18. Until the debt is repaid, Petitioner Crosby 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).

19. USDA Rural Development, and those collecting on its behalf, had already begun garnishing Petitioner Crosby's pay in mid-2011, but upon implementation of this Decision, no further garnishment is authorized, through October 2012. Then, beginning no sooner than November 2012, following review of Petitioner Crosby's financial circumstances to determine what amount of garnishment she can withstand without financial hardship, garnishment up to 15% of Petitioner Crosby's disposable pay is authorized. 31 C.F.R. § 285.11.

20. USDA Rural Development, and those collecting on its behalf, will NOT be required to return to Petitioner Crosby any amounts already collected through garnishment of Petitioner Crosby's pay, prior to implementation of this Decision.

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

Done at Washington, D.C.
this 29th day of September 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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