

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	
Nancy F. Tallman, f/k/a)	AWG Docket No. 11-0345
)	
Nancy F. Feland,)	
)	
Petitioner)	Decision and Order

1. The hearing by telephone was held on September 15, 2011. Ms. Nancy F. Tallman, formerly known as Nancy F. Feland (“Petitioner Tallman”), participated, represented by Gregory B. Selbo, Esq. Petitioner Tallman’s husband, Tim Tallman was also present.

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

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Issues

3. The principal issue is whether Petitioner Tallman owes to USDA Rural Development a balance of **\$7,607.42** in repayment of two United States Department of Agriculture Farmers Home Administration loans, made to her and her former husband in 1978 and in 1983, for a home in North Dakota. That balance is now unsecured (“the debt”), and is calculated as of September 7, 2011. See USDA Rural Development Exhibits, esp. RX 6, pp. 1, 2.

Summary of the Facts Presented

4. USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed September 8, 2011) are admitted into evidence, together with the testimony of Mr. Gene Elkin and Ms. Mary Kimball.
5. Petitioner Tallman's Exhibits (PX-1 through PX-6), plus Mr. Selbo's letter dated September 7, 2011 (filed on September 7, 2011) are admitted into evidence, together with the testimony of Petitioner Tallman, together with Petitioner Tallman's Hearing Request (including Mr. Selbo's letter dated July 27, 2011 and all accompanying documents).
6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$7,607.42** would increase the current balance by \$2,130.08, to \$9,737.50. [This includes both loans.] *See* USDA Rural Development Exhibits, esp. RX 6, pp. 1, 2.
7. The amount Petitioner Tallman (then Feland) borrowed, together with her former husband, in 1978 was \$35,620.00; the amount they borrowed in 1983 was \$2,800.00 (\$38,420.00 all together). RX 1, RX 2.
8. Petitioner Tallman testified that she has been divorced from the co-borrower, Mr. Feland, since 1993. *See* PX-5, especially Mr. Selbo's letter dated July 23, 2008, which includes, "As part of the divorce, Deane (Feland) was deeded the house, and he was to assume all obligations on the house." Petitioner Tallman and her husband Timothy Tallman, whom she married in 1994, quitclaimed the home to Mr. Feland 6 years after the divorce, in 1999. PX-5.
9. Reamortizations in 1995 and in 1997 were for Mr. Feland's benefit, not Petitioner Tallman's benefit, in that they occurred AFTER the divorce, when Mr. Feland had sole enjoyment of the house. These reamortizations added the delinquent amounts to principal, thereby making the accounts current. *See* USDA Rural Development Narrative. By the time of the short sale in 2000 (7 years after the divorce), the debt had grown to \$56,014.26:

\$ 52,614.95	Principal Balance prior to short sale (both loans)
\$ 2,598.14	Interest Balance prior to short sale (both loans)
<u>\$ 801.17</u>	Fee Balance prior to short sale (both loans)
\$ 56,014.26	Total Amount Due prior to short sale (both loans)
<u>=====</u>	
- <u>\$ 32,466.61</u>	Proceeds from short sale
\$ 23,547.65	Unpaid after short sale in 2000 (both loans)

RX 5 and USDA Rural Development Narrative.

10. From Mr. Feland's sale of the home in 2000, \$32,466.61 was applied to reduce the balance, leaving a balance owed after the sale of \$23,547.65. Since the short sale, no additional interest has accrued. An escrow refund (\$344.31) was applied in 2001, reducing the balance to \$23,203.34. Numerous collections, from Mr. Feland and also from Petitioner Tallman, have further reduced the balance. Mr. Feland died in 2007. Petitioner Tallman identified monies already collected from her to include (a) tax refund and rebate taken in 2008 applied on the small loan; (b) monies applied on the small loan in 2010 (\$2,031.00, which yielded \$1,577.50 net), and (c) monies applied on the large loan in 2011 (\$470.00, which yielded \$453.00 net).

11. When the \$2,000.00 check was presented to USDA Rural Development in 2010 on Petitioner Tallman's behalf, to pay the loan in full, \$437.50 was taken out of the \$2,000.00 to pay collection fees; \$1,562.50 net was applied to reduce the balance; and \$724.55 of the debt was canceled. RX 5, p. 4. Petitioner Tallman thought the debt was paid in full, and the paperwork does not indicate otherwise. *See*, Payment Agreement, part of the Hearing Request documents. But only the smaller of the 2 loans was paid in full. There was still \$8,060.42 remaining to be paid on the larger loan. The tax refund (\$453.00 net) taken in 2011 reduced the balance to **\$7,607.42**. RX 5, p. 3.

12. When Petitioner Tallman entered into the borrowing transactions with her co-borrower Mr. Feland, in 1978 and 1983, certain responsibilities were fixed, as to each of them, that were addressed but not erased by the divorce. Even though Petitioner Tallman's former husband Mr. Feland may have been ordered to pay the debt, this remains Petitioner Tallman's debt also. USDA Rural Development is entitled, legally, to collect from Petitioner Tallman. I conclude that this is true, despite the fact that the debt grew larger and larger after the divorce, due to Mr. Feland's delinquency. Although Petitioner Tallman could have pursued the co-borrower Mr. Feland for monies collected from her on the debt, Mr. Feland's death in 2007 may preclude any such recovery. That does not prevent USDA Rural Development from collecting from her. Thus, I conclude that Petitioner Tallman owes the balance of **\$7,607.42** (excluding the remaining potential collection fees), as of September 7, 2011, and that USDA Rural Development may collect that amount from her. [The debt is her co-borrower's and her joint-and-several obligation.]

13. Petitioner Tallman's Financial Statement signed on March 30, 2010 (PX-3), and her wage stub showing her current earnings working part-time (PX-4), and the information provided during the hearing persuade me that the amount of money Petitioner Tallman makes is too small to be garnished. [**Petitioner Tallman should not be garnished when**

her disposable pay is [REDACTED] per week or less.]¹ USDA Rural Development does not garnish in violation of 29 C.F.R. § 870.10, where disposable pay does not exceed “an amount equivalent to thirty times the minimum (hourly) wage” for a week, currently [REDACTED] per week (30 x \$7.25).

14. Petitioner Tallman’s reasonable and necessary living expenses consume her part-time pay. No amount of Petitioner Tallman’s disposable pay could be garnished without creating hardship. 31 C.F.R. § 285.11. (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.) Petitioner Tallman and her husband earn about [REDACTED] per year; they do not own a house: a trust owns the house. Petitioner Tallman is 61 years of age. Although Petitioner Tallman has the support of her husband, he is **not** liable to repay the debt at issue here.

15. Petitioner Tallman’s attorney Mr. Selbo asks for fairness, particularly since Petitioner Tallman and everyone involved on her behalf thought that paying the [REDACTED] in 2010 settled the full amount of the debt. Mr. Selbo pleads waiver and laches. Mr. Selbo articulated the lack of notice to Petitioner Tallman in his letter dated July 23, 2008, after *offset* of federal tax rebate and refund:

Realizing that under a strict reading of the United States Code and the Congressional Federal Register an offset may be legally available under these circumstances, we submit that such an offset is unjust. Nancy and Timothy (Petitioner Tallman and her husband) have never received a notice of delinquency from the Department of Agriculture. Tim, in fact, has no liability but apparently because he and Nancy filed a joint tax return, the monies (refund and rebate) were taken. They have never received notification either was liable for a debt held by the Department of Agriculture. The notice from the Department of the Treasury was the first indication of an outstanding obligation, some six years after the debt was turned over to the Financial Management Service. It has been eight years since the account became delinquent. It has been nearly fifteen years since her divorce, the point in time when she should have been free from any obligation on the house. If she had received notice while Deane (Feland) was alive, she may have been able to execute the appropriate documents to release her from this obligation. Instead, she is faced with the prospect of being liable for a debt she should never have been obligated to pay and was

¹ The regulation at 31 C.F.R. § 285.11 includes the following restriction on garnishment: “The amount set forth at 15 U.S.C. 1673(a)(2) is the amount by which a debtor's disposable pay (for that week) exceeds an amount equivalent to thirty times the minimum (hourly) wage. See 29 CFR 870.10.”

never notified about until now. Without notification, she lost the opportunity to contest this matter.

In light of these circumstances, we respectfully ask that you release her from this obligation.

PX-5.

Mr. Selbo's letter from 2008 is applicable to Petitioner Tallman's circumstances still, and I urge Treasury's collection agency to take these circumstances into account. Paragraph 14 of the Deed of Trust (RX 2) authorizes reamortizations and release of the property from the lien. Mr. Selbo cautions, however, that Petitioner Tallman was unaware of and did not agree to (a) the reamortizations, (b) the continuing delinquency, (c) the short sale, or (d) the releasing of the collateral.

16. Petitioner Tallman is responsible and able to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

17. **Petitioner Tallman, you may choose to call Treasury's collection agency** to negotiate the repayment of the debt. Petitioner Tallman, this will 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**. You may wish to include your attorney (and your husband) in the telephone call. Petitioner Tallman, you may choose to offer to Treasury's collection agency to compromise the debt for an amount you are able to pay, to settle the claim for less. You may choose to emphasize the unfairness of you being required to pay for the increase in indebtedness after the divorce (1993), when you were not involved and not given notice of the reamortizations (1995, 1997) and continued delinquency by your former husband, and his short sale (2000) and the releasing of the collateral. You may choose to emphasize the settlement in 2010 that resulted in a \$2,000.00 payment made on your behalf, which you thought was payment in full.

Findings, Analysis and Conclusions

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

19. Petitioner Tallman owes the debt described in paragraphs 6 through 12.

20. **No garnishment is authorized.** No amount of Petitioner Tallman's disposable pay could be garnished without creating hardship. 31 C.F.R. § 285.11.

21. Repayment of the debt may occur through *offset* of Petitioner Tallman's **income tax refunds** or other **Federal monies** payable to the order of Ms. Tallman. [Petitioner Tallman, if you file a joint tax return and a part of the refund belongs to your husband, you may call the Treasury toll-free number regarding refunding the portion for the "injured spouse." See paragraph 17. Also, if in the future a portion of your social security payments is *offset*, you may choose to call the Treasury toll-free number to ask that a smaller portion be *offset*.]

Order

22. Until the debt is repaid, Petitioner Tallman 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).

23. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment. 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 4th day of October 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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