

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	AWG Docket No. 11-0388
Joe K. Lemer,)	
)	
Petitioner)	Decision and Order

1. The hearing by telephone was held on October 25, 2011. Mr. Joe K. Lemer, full name Joe Kevin Lemer, the Petitioner (“Petitioner Lemer”), participated, representing himself (appearing *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
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Summary of the Facts Presented

3. USDA Rural Development’s Exhibits, plus Narrative, Witness & Exhibit List (filed September 21, 2011), are admitted into evidence, together with the testimony of Mary Kimball.

4. Petitioner Lemer’s summary letter, plus his Consumer Debtor Financial Statement and other exhibits (PX 1 through PX 4) (filed October 19, 2011), are admitted into evidence, together with the testimony of Petitioner Lemer, together with his Hearing Request dated August 12, 2011, including his two-page letter and all accompanying documents.

5. Petitioner Lemer owes to USDA Rural Development **\$26,817.57** (as of September 13, 2011) in repayment of a loan made in 1983 by the United States Department of Agriculture Farmers Home Administration (now USDA Rural Development, Rural Housing Service). Petitioner Lemer borrowed to buy a home in Texas. The **\$26,817.57** balance is now unsecured (“the debt”). [Garnishment is ongoing; the balance is being reduced week by week.] *See* USDA Rural Development Exhibits, esp. RX 4, RX 5.

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$26,817.57** would increase the current balance by \$7,508.92, to \$34,326.49 (as of September 13, 2011). *See* USDA Rural Development Exhibits, esp. RX 5.

7. Petitioner Lemer’s situation is extraordinary. Never before on a Farmers Home Administration (FmHA) loan, have I seen so much interest, **nearly \$20,000.00 interest**, associated with a \$28,256.38 principal balance (\$12,621.11 interest plus \$7,368.54 interest, for a total of \$19,989.65 interest). All of that interest accrued through the short sale date of March 16, 1998 (**no** interest has accrued since that short sale date).

8. The interest rate was 10-3/4%, but the amount of time that passed was the dominant factor. Petitioner Lemer’s two-page letter accompanying his Hearing Request explains. After more than 8 years in the home, in 1991, Petitioner Lemer put the home up for sale. In December 1991 Petitioner Lemer turned the keys over to the Farmers Home Administration and moved out. Petitioner Lemer made no monthly payments after 1991. Petitioner Lemer kept trying to sell the home. It did not sell. Petitioner Lemer wrote: “During the years of 1992 through 1997, I have tried to sell the house to several people, but the FmHA office never closed on the house and refused to let me sell the house.”

9. Petitioner Lemer testified that the house remained empty, and in good condition, all those years (more than 6 years). And, of course, the interest kept accruing, all those years. Petitioner Lemer testified that the realtor is to be credited with getting the house sold, in 1998; it sold to a neighbor who had helped Petitioner Lemer keep it in good repair. The loan Petitioner Lemer borrowed in 1983 from USDA Farmers Home Administration was \$35,500.00. RX 1. By the time of the short sale in 1998, that debt had grown to \$55,919.51:

\$ 28,256.38	Principal Balance prior to short sale
\$ 12,621.11	Unpaid Interest
\$ 7,368.54	Unpaid Interest
\$ 7,214.48	Fee Balance prior to short sale (<i>ie</i> , real estate taxes and insurance)
<u>\$ 459.00</u>	Pre foreclosure Fee
\$ 55,919.51	Total Amount Due

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=====	
- \$ 19,835.59	Proceeds ¹ from short sale
\$ 36,083.92	Unpaid in 1998
=====	

RX 4, esp. pp. 1 and 2.

So the short sale left \$36,083.92 unpaid in 1998.

10. Since the short sale, no additional interest has accrued, and three *offsets* during 2001 through 2005, likely Federal income tax refunds, have reduced the balance, as have the garnishments that began in 2010. The *offsets* and garnishments applied to the debt (through September 13, 2011) leave **\$26,817.57** unpaid (excluding the potential remaining collection fees). See RX 4 and RX 5. Garnishment is ongoing, so this balance is being reduced weekly.

11. Petitioner Lemer works hard as a technician for Cargill Meat Solutions, and he is financially successful, but he has responsibilities and he finds the garnishments, which began in 2010, to be too much. Petitioner Lemer's current gross pay per week is roughly [REDACTED] his current disposable pay per week is roughly \$ [REDACTED]. [Disposable pay (within the meaning of 31 C.F.R. § 285.11) 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.]

12. As I calculate it, Petitioner Lemer makes nearly [REDACTED] per month gross pay, yielding about [REDACTED] per month disposable pay (excluding overtime). In addition to *offsets*, garnishment up to 15% of Petitioner Lemer's disposable pay can occur unless he cannot withstand garnishment in that amount without hardship. 31 C.F.R. § 285.11. Although garnishment at 15% of Petitioner Lemer's disposable pay yields roughly [REDACTED] per month in repayment of the debt, he cannot withstand garnishment in that amount without financial hardship.

13. Petitioner Lemer's current reasonable and necessary living expenses consume about [REDACTED] per month. [His four children are all grown.] The [REDACTED] per month does not include the additional expenditures that he may make for his 7-year old granddaughter and his parents (each of whom is retired; his mother has medical challenges). The [REDACTED] per month living expenses leave less than [REDACTED] per month to pay for such additional

¹ The property sold for \$23,000.00, and \$19,835.59 is what USDA received from the sale.

expenditures, and for the occasional non-budgeted expenditures, and for his payments on debt. The garnishment to pay the USDA Rural Development debt appears to have been in excess of [REDACTED] per month (probably because of occasional overtime). Petitioner Lemer pays every month on a [REDACTED] hospital balance for his appendix surgery. He pays on a loan against his retirement fund at work.

14. Petitioner Lemer is responsible and has made progress in repaying the USDA Rural Development debt, but paying 15% of his disposable pay has created hardship. Consequently, to prevent hardship, garnishment shall be limited to **5%** of Petitioner Lemer's disposable pay through **November 2013**; then, beginning no sooner than **December 2013**, garnishment **up to 10%** of Petitioner Lemer's disposable pay is authorized. 31 C.F.R. § 285.11.

15. Petitioner Lemer, you may want to negotiate the disposition of the debt with Treasury's collection agency. *See* paragraph 16.

Discussion

16. Garnishment shall be limited to **5%** of Petitioner Lemer's disposable pay through **November 2013** (*see* paragraph 14). Petitioner Lemer, you may want to **negotiate** the disposition of the debt. Petitioner Lemer, 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 choose to offer to compromise the debt for an amount you are able to pay, to settle the claim for less. You may choose to offer to pay through solely **offset** of **income tax refunds**, perhaps with a specified amount for a specified number of years. You may wish to include someone else with you in the telephone call when you call to negotiate.

Findings, Analysis and Conclusions

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

18. Petitioner Lemer owes the debt described in paragraphs 5 through 9. Petitioner Lemer faults FmHA for the sale taking so long (more than 6 years), and Petitioner Lemer wrote that he believed he had an agreement with Mr. Gilbreath in 1998 that the remaining debt would be written off. *See* Petitioner Lemer's two-page letter accompanying his Hearing Request. *See also* Petitioner Lemer's summary letter and exhibits filed October 19, 2011. Mr. Gilbreath's letter (PX-2) invited Petitioner Lemer to apply (after sale) for a cancellation of any carry over debt. Apparently any negotiation between Petitioner Lemer and USDA Rural Development that happened after the short sale was not completed. There is no documentation that would permit me to find that Petitioner Lemer does not owe the

debt. I would need evidence of forgiveness or cancellation of the remaining debt, such as a returned promissory note, a written release of liability, or a 1099-C, none of which is before me. I am indeed sorry that so much interest accrued while the house was empty.

19. Garnishment is authorized, but to prevent financial hardship shall be limited to **5%** of Petitioner Lemer's disposable pay through **November 2013**; then, beginning no sooner than **December 2013**, garnishment **up to 10%** of Petitioner Lemer's disposable pay is authorized. 31 C.F.R. § 285.11. I am NOT, however, ordering any amounts already collected through garnishment of Petitioner Lemer's pay prior to implementation of this Decision to be returned to Petitioner Lemer.

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

Order

21. Until the debt is repaid, Petitioner Lemer 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).

22. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment limited to **5%** of Petitioner Lemer's disposable pay through **November 2013**; then, beginning in December 2013, garnishment up to 10% of Petitioner Lemer's disposable pay is authorized. 31 C.F.R. § 285.11.

23. USDA Rural Development, and those collecting on its behalf, will NOT be required to return to Petitioner Lemer any amounts already collected through garnishment of Petitioner Lemer'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 28th day of October 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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