

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Bobbi J. Gainor,)	
)	Docket No. 12-0036
f/k/a Bobbi Jo Rall,)	
)	
Petitioner)	Decision and Order

Appearances:

none, for the Petitioner Bobbi J. Gainor (formerly known as Bobbi Jo Rall); and

Michelle Tanner, Appeals Coordinator, United States Department of Agriculture, Rural Development, Centralized Servicing Center, St. Louis, Missouri, for the Respondent (USDA Rural Development).

1. The hearing by telephone was held as scheduled on January 18, 2012. Ms. Bobbi J. Gainor, formerly known as Bobbi Jo Rall (“Petitioner Gainor”), did not participate. (Petitioner Gainor did not participate by telephone: in response to my Order issued December 14, 2011, Petitioner Gainor provided no telephone number where she could be reached for the hearing by telephone. At the telephone number Ms. Gainor provided in her Hearing Request, no one answered; there was a recording, and we did not receive a return call after leaving a message on the recorder requesting that she call back and giving her the number to call.)

2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and is represented by Michelle Tanner.

Summary of the Facts Presented

3. Petitioner Gainor owes to USDA Rural Development a balance of **\$48,671.82** (as of December 14, 2011) in repayment of a United States Department of Agriculture Farmers Home Administration loan made in 1993, for a home in North Dakota. The balance is now

unsecured (“the debt”). [The loan balance will change, because garnishment is ongoing as to both Petitioner Gainor and her former husband (RX 7, pp. 2, 3); the balance will likely have been reduced by the time I sign this Decision.] *See* USDA Rural Development Exhibits RX 1 through RX 7, plus Narrative, Witness & Exhibit List (filed December 20, 2011), which are admitted into evidence, together with the testimony of Michelle Tanner.

4. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$48,671.82** would increase the current balance by \$13,628.11, to \$62,299.93. *See* USDA Rural Development Exhibits, esp. RX 7, p. 4.

5. The amount Petitioner Gainor borrowed (with her then-husband, Curtis J. Rall) in 1993 was \$45,500.00. RX 1. By the time the Agency determined that the net recovery value of the property would be negative, and thus the lien was valueless and the Mortgage would be released, on about February 11, 2011, the debt had grown to \$49,400.85:

\$ 33,660.59	Principal Balance
\$ 4,945.91	Interest Balance ¹ prior to foreclosure sale
\$ 10,794.35	Fee Balance prior to foreclosure sale (includes unpaid real estate taxes, unpaid insurance premiums)

\$ 49,400.85	Total Amount Due
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RX 7 and USDA Rural Development Narrative.

Collections from Treasury (from not only Petitioner Gainor but also her former husband) of \$729.03 applied to the debt leave **\$48,671.82** unpaid now (excluding the potential remaining collection fees). *See* RX 7, and USDA Rural Development Narrative.

6. Petitioner Gainor failed to file a Consumer Debtor Financial Statement, or anything, in response to my Order issued December 14, 2011. Thus I cannot calculate Petitioner Gainor’s current disposable pay. (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.)

7. There is no evidence before me to use to consider the factors to be considered under 31 C.F.R. § 285.11. In other words, I cannot tell whether garnishment to repay “the debt”

¹ USDA Rural Development’s Narrative states the interest will be adjusted to a lower amount.

(see paragraph 3) in the amount of 15% of Petitioner Gainor's disposable pay creates a financial hardship.

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

Discussion

9. Garnishment of Petitioner Gainor's disposable pay is authorized. I encourage **Petitioner Gainor and Treasury's collection agency to negotiate promptly** the repayment of the debt. Petitioner Gainor, 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**. Petitioner Gainor, 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 ask that **the debt be apportioned between you and your co-borrower**. Petitioner Gainor, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

11. Petitioner Gainor owes the debt described in paragraphs 3, 4 and 5.

12. When Petitioner Gainor entered into the borrowing transaction with her co-borrower Mr. Curtis J. Rall, certain responsibilities were fixed, as to each of them. [The debt is her co-borrower's and her joint-and-several obligation.] If Petitioner has any recourse against her co-borrower for reimbursement for amounts she has paid on the debt, she may want to pursue that. USDA Rural Development could collect, legally, the entire unpaid balance of the debt from Petitioner Gainor. [And, likewise, USDA Rural Development could collect, legally, the entire unpaid balance of the debt from Petitioner Gainor's co-borrower.]

13. **Garnishment up to 15% of Petitioner Gainor's disposable pay** is authorized. There is no evidence that financial hardship has been created by the garnishment. 31 C.F.R. § 285.11.

14. **No refund** to Petitioner Gainor of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.

15. Repayment of the debt may also occur through **offset** of Petitioner Gainor's **income tax refunds** or other **Federal monies** payable to the order of Ms. Gainor.

Order

16. Until the debt is repaid, Petitioner Gainor 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).

17. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with **garnishment up to 15% of Petitioner Gainor's disposable pay**. 31 C.F.R. § 285.11.

18. I am **NOT**, however, ordering any amounts already collected prior to implementation of this Decision, whether through *offset* or garnishment of Petitioner Gainor's pay, to be returned to Petitioner Gainor.

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 January 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Michelle Tanner, Appeals Coordinator
USDA / RD Centralized Servicing Center
Bldg 105 E, FC-244
4300 Goodfellow Blvd
St Louis MO 63120-1703
michelle.tanner@stl.usda.gov

314-457-5775 phone
314-457-4547 FAX

Hearing Clerk's Office
U.S. Department of Agriculture
South Building Room 1031
1400 Independence Avenue, SW
Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776