

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Tina M. Questel,)	Docket No. 12-0046
)	
Petitioner)	Decision and Order

Appearances:

none, for the Petitioner Tina M. Questel; 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 19, 2012. Ms. Tina M. Questel, full name Tina Marie Questel (“Petitioner Questel”), did not participate. (Petitioner Questel did not participate by telephone: there was no telephone number for Ms. Questel provided in her Hearing Request; and in response to my Order issued December 14, 2011, Petitioner Questel provided no telephone number where she could be reached for the hearing by telephone.)

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 Questel owes to USDA Rural Development a balance of **\$53,452.44** (as of December 10, 2011) in repayment of a United States Department of Agriculture Farmers Home Administration loan made in 1994, for a home in Texas. The balance is now unsecured (“the debt”). [The loan balance will change, because garnishment is ongoing (RX 6, p. 3); the balance will likely have been reduced by the time I sign this Decision.] *See* USDA Rural Development Exhibits RX 1 through RX 6, plus Narrative, Witness & Exhibit

List (filed December 28, 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 **\$53,452.44** would increase the current balance by \$16,035.73, to \$69,488.17. *See* USDA Rural Development Exhibits, esp. RX 6, p. 4.

5. The amount Petitioner Questel borrowed in 1994 was \$56,970.00. RX 1. By the time the foreclosure sale was held (post-bankruptcy) on December 2, 2008, and \$45,050.00 was received on December 12, 2008 and applied to the debt, and costs and fees applied, the debt had grown to \$58,531.56:

\$ 58,021.56	Unpaid Principal Balance prior to foreclosure sale
\$ 24,224.26	Unpaid Interest Balance prior to foreclosure sale
\$ 21,335.74	Recoverable costs and fees (fees includes unpaid real estate taxes, unpaid insurance premiums), interest on fees, and other items, pre-sale and post-sale)

\$103,581.56	
- <u>45,050.00</u>	Received from the foreclosure sale
\$ 58,531.56	Total Amount Due
=====	

RX 6, p. 2, and USDA Rural Development Narrative.

Collections from Treasury (from Petitioner Questel, through *offset* and garnishment) and a refund applied to the debt leave **\$53,452.44** unpaid as of December 10, 2011 (excluding the potential remaining collection fees). *See* RX 6, pp. 2 and 3, and USDA Rural Development Narrative.

6. Petitioner Questel failed to file a Consumer Debtor Financial Statement, or anything, in response to my Order issued December 14, 2011. Thus I cannot calculate Petitioner Questel'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"

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

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

Discussion

9. Garnishment of Petitioner Questel's disposable pay is authorized. I encourage **Petitioner Questel and Treasury's collection agency to negotiate promptly** the repayment of the debt. Petitioner Questel, 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 Questel, 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. Petitioner Questel, 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 Questel and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.

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

12. During Petitioner Questel's Chapter 13 bankruptcy (2001-2004), she may have complied with the plan to pay the past due amounts on the debt, but she failed to keep current. Thus a new Notice of Acceleration was sent to her on April 26, 2005. RX 4.

13. **Garnishment up to 15% of Petitioner Questel'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 Questel 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 Questel's **income tax refunds** or other **Federal monies** payable to the order of Ms. Questel.

Order

16. Until the debt is repaid, Petitioner Questel 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 Questel's disposable pay**. 31 C.F.R. § 285.11.

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

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

Done at Washington, D.C.
this 24th day of January 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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