

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) [AWG]
 Keith A. Tolleson) Docket No. **12-0075**
)
 Petitioner) **Decision and Order**

Appearances:

Keith A. Tolleson, full name Keith Allen Tolleson (“Petitioner Tolleson”), representing himself (appearing *pro se*).

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 on February 14, 2012. Keith A. Tolleson, full name Keith Allen Tolleson (“Petitioner Tolleson”), participated. The record was held open through March 1, 2012, for Petitioner Tolleson to file financial information (such as a Consumer Debtor Financial Statement, and a copy of a couple of recent pay stubs, typical of his pay).

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 Tolleson owes to USDA Rural Development a balance of **\$30,058.35** (as of January 21, 2012) in repayment of a United States Department of Agriculture / Rural Development / Rural Housing loan made in 1995 for a home in Louisiana, the balance of which is now unsecured (“the debt”). See USDA Rural Development Exhibits RX 1 through RX 4, especially RX 4, p. 2, plus Narrative, Witness & Exhibit List (filed January

24, 2012), 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 **\$30,058.35** would increase the current balance by \$8,416.34, to \$38,474.69. *See* USDA Rural Development Exhibits, esp. RX 4, p. 4, and the testimony of Michelle Tanner.

5. Between 4 and 5 years after the loan was made, the loan was reamortized, in 1999. RX 1, pp. 4-5. The loan had become delinquent, and reamortization made the loan current, by adding the delinquent amount to the principal balance. The reamortization did not change the total amount owed, which all became principal. The principal amount due on the account became \$64,039.44. Petitioner Tolleson was not able to keep the loan current; house payments were made only through January 26, 2000. A Notice of Acceleration and Intent to Foreclose was sent to him on July 6, 2000. RX 2, pp. 1-3.

6. The appraisal in October 2000 showed the current market value of the home to be \$30,500.00, which is what the home was sold for, on November 21, 2000. After the realtor commission was subtracted, the net proceeds from sale of the home, available to apply on the loan, were \$28,670.00. RX 3, p. 6.

7. The amount Petitioner Tolleson borrowed in 1995 was \$61,280.00. RX 1. By the time the home was sold on November 21, 2000, the debt had grown to \$68,563.66:

\$ 63,938.02	Principal Balance prior to sale
\$ 4,204.14	Interest Balance prior to sale
<u>\$ 421.50</u>	Recoverable costs (includes negative escrow, foreclosure fees)
\$ 68,563.66	Total Amount Due prior to sale
=====	
+ \$ 325.00	Foreclosure fee billed for appraisal
- \$ 575.00	Legal fees
- \$ 281.19	Insurance
<u>\$ 68,032.47</u>	Amount Due
=====	

RX 4, p. 1 and USDA Rural Development Narrative and the testimony of Michelle Tanner.

8. Interest stopped accruing when sale proceeds were applied on the loan, in 2000. Proceeds from sale of the home reduced the Amount Due by \$28,670.00. Collections from Treasury applied to the debt after collection fees are subtracted have reduced the debt to **\$30,058.35** unpaid as of January 21, 2012 (excluding the potential remaining collection fees). *See* RX 4, USDA Rural Development Narrative, and the testimony of Michelle Tanner.

9. Although my Order dated January 25, 2012, required financial disclosure from Petitioner Tolleson, such as filing a Consumer Debtor Financial Statement, he filed nothing. The record was held open following the hearing, and still Petitioner Tolleson filed nothing. Thus I cannot calculate Petitioner Tolleson'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.)

10. Petitioner Tolleson testified that because he had been required to drive 250-300 miles per day, he had stepped down from his outside sales commission work 6 months before the hearing. Petitioner Tolleson testified that he took home only [REDACTED] per week after taxes and insurance, for himself and his son. He testified that he has grandchildren, his daughter's children. Without financial documentation, there is insufficient evidence before me to consider the factors under 31 C.F.R. § 285.11. In other words, there is not enough proof that garnishment to repay "the debt" (*see* paragraph 3) in the amount of 15% of Petitioner Tolleson's disposable pay will create a financial hardship.

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

Discussion

12. Garnishment of Petitioner Tolleson's disposable pay is authorized. I encourage Petitioner Tolleson and Treasury's collection agency to **negotiate** the repayment of the debt. Petitioner Tolleson, 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 Tolleson, you may want to request apportionment of debt between you and the co-borrower. Petitioner Tolleson, 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 Tolleson, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

13. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Tolleson and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.
14. Petitioner Tolleson owes the debt described in paragraphs 3 through 8.
15. **Garnishment up to 15% of Petitioner Tolleson's disposable pay** is authorized. There is insufficient evidence that financial hardship will be created by the garnishment. 31 C.F.R. § 285.11.
16. **No refund** to Petitioner Tolleson of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.
17. Repayment of the debt may also occur through *offset* of Petitioner Tolleson's **income tax refunds** or other **Federal monies** payable to the order of Mr. Tolleson.

Order

18. Until the debt is repaid, Petitioner Tolleson 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).
19. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with **garnishment up to 15% of Petitioner Tolleson's disposable pay**. 31 C.F.R. § 285.11.
20. I am **NOT** ordering any amounts already collected prior to implementation of this Decision, whether through *offset* or garnishment of Petitioner Tolleson's pay, to be returned to Petitioner Tolleson.

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

Done at Washington, D.C.
this 10th day of April 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