

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Pamela J. Bush,)	Docket No. 12-0116
)	
Petitioner)	Decision and Order

Appearances:

Pamela J. Bush, the Petitioner, representing herself (appearing *pro se*); 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 on February 1 and 9, 2012. Pamela J. Bush, the Petitioner, formerly known as Pamela J. Brandt (“Petitioner Bush”), participated, representing herself (appears *pro se*).

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 Bush’s documents filed on January 26, 2012, are admitted into evidence, together with the testimony of Petitioner Bush. The documents filed on January 26 include a “Consumer Debtor Financial Statement” signed January 26, 2012, with accompanying documents. Also admitted into evidence is Petitioner Bush’s Hearing Request filed on December 20, 2011, and accompanying documents, including Petitioner Bush’s letter dated November 16, 2011; and Kyle B. Smith, Esq.’s letter dated 27 April 2007.

4. USDA Rural Development’s Exhibits RX 1 through RX 7, plus Narrative, Witness & Exhibit List, were filed on January 5, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner.

5. Petitioner Bush owes to USDA Rural Development **\$15,637.13** (as of December 29, 2011, *see esp.* RX 7), in repayment of a United States Department of Agriculture Rural Development Rural Housing Service loan made in 2003, for a home in Ohio. The balance is now unsecured (“the debt”).

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$15,637.13**, would increase the balance by \$4,378.40 to \$20,015.53. *See esp.* RX 7, p. 3.

7. Petitioner Bush also borrowed \$19,000.00 to buy the home, through Portage Area Development Corporation, which was the first lien holder. RX 2. The amount Petitioner Bush borrowed from USDA Rural Development in 2003 was \$75,426.00. RX 1. Petitioner Bush was not able to keep the loans current; foreclosure proceedings began. The home was sold for \$94,100.00, in a short sale, on or about March 31, 2006, prior to a foreclosure sale taking place. USDA Rural Development Narrative.

8. Sale proceeds went first to the first lien holder. The first lien holder required \$36,355.00 for payoff, closing costs and termite repair. USDA Rural Development received the remaining funds of \$57,745.00. USDA Rural Development Narrative.

9. A Notice of Acceleration and Intent to Foreclose was sent to Petitioner Bush on March 28, 2006, by USDA Rural Development. RX 3, pp. 4-6. When USDA Rural Development received the remaining funds of \$57,745.00 on April 4, 2006, the USDA Rural Development debt was \$74,354.15:

\$ 71,809.14	Principal Balance
\$ 1,392.90	Interest Balance prior to sale
\$ 1,152.11	Fee Balance prior to sale (includes unpaid real estate taxes, unpaid insurance premiums, late charge)

\$ 74,354.15	Total Amount Due when sale funds received were applied on the loan
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RX 6, p. 4 and USDA Rural Development Narrative.

The remaining sale funds of \$57,745.00 were applied to the Amount Due. Interest stopped accruing when remaining sale funds were applied on the loan, in April 2006. The Amount Due was decreased also by \$473.89 for an Escrow Balance. RX 6, p. 4. The Amount Due was increased by \$225.00 for a Fee billed after posting. RX 4, p. 8; RX 7, p. 1. Collections from Treasury in 2008 and 2011 applied to the debt reduced the debt from \$16,360.26 to **\$15,637.13** unpaid as of December 29, 2011 (excluding the potential remaining collection fees). *See* RX 7 and USDA Rural Development Narrative.

10. There was debt settlement negotiation after the remaining sale funds had been applied on the loan. Petitioner Bush offered to pay \$500.00. Her offer is found at RX 5, pp. 4-22. That offer was received on May 15, 2006. USDA Rural Development promptly sent Petitioner Bush a counter-offer of \$12,300.00 payable over 60 months at \$205.00 per month. That counter-offer was dated May 18, 2006. RX 5, p. 23. Petitioner Bush did not accept the counter-offer. USDA Rural Development was required by statute to transfer the debt to the U.S. Treasury and did so on or about July 5, 2006. RX 4, p. 5. Thus any offer Petitioner Bush may have wanted to make after about July 5, 2006 could no longer be considered by USDA Rural Development; it was too late. The entry dated July 17, 2006 (RX 4, p. 5; RX 4, p. 8) indicates Petitioner Bush was advised to contact Treasury and given the phone number. *See also* the summary contained in a Memo dated October 3, 2006, found at RX 6, p. 5.

11. Petitioner Bush is working, and her husband (who is not responsible to repay the loan) is an unemployed teacher who may be going back to school. Petitioner Bush works as a school custodian. Her disposable pay (within the meaning of 31 C.F.R. § 285.11) is about [REDACTED] per month. [Disposable income 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 Bush and her husband live with other family members (6 adults and a baby, altogether) and pay for utilities and about 90% of the groceries, since a brother-in-law pays the mortgage. In addition to their monthly living expenses, they are repaying considerable debt, including student loans; car payments; [REDACTED] per month on 9 credit cards together; and other debt. To prevent hardship, potential garnishment to repay “the debt” (*see* paragraph 5) must be limited to **5%** of Petitioner Bush’s disposable pay through May 2013; then **up to 10%** of Petitioner Bush’s disposable pay beginning June 2013 through May 2016; then **up to 15%** of Petitioner Bush’s disposable pay thereafter. 31 C.F.R. § 285.11.

12. Petitioner Bush is responsible and able to negotiate the disposition of the debt with Treasury’s collection agency.

Discussion

13. Garnishment is authorized, in limited amount. *See* paragraph 11. Petitioner Bush, you may want to telephone Treasury’s collection agency to **negotiate** the repayment of the debt. Petitioner Bush, this will require **you** to telephone the collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Bush, 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 Bush, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

14. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Bush and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.
15. Petitioner Bush owes the debt described in paragraphs 5 through 9.
16. **Garnishment is authorized**, as follows: through May 2013, garnishment **up to 5%** of Petitioner Bush's disposable pay; beginning June 2013 through May 2016, garnishment **up to 10%** of Petitioner Bush's disposable pay; and thereafter, garnishment **up to 15%** of Petitioner Bush's disposable pay. 31 C.F.R. § 285.11.
17. I am **NOT** ordering any amounts already collected prior to implementation of this Decision, whether through *offset* or garnishment of Petitioner Bush's pay, to be returned to Petitioner Bush.
18. Repayment of the debt may occur through *offset* of Petitioner Bush's **income tax refunds** or other **Federal monies** payable to the order of Ms. Bush.

Order

19. Until the debt is repaid, Petitioner Bush 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).
20. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment **up to 5%** of Petitioner Bush's disposable pay through May 2013. Beginning June 2013 through May 2016, garnishment **up to 10%** of Petitioner Bush's disposable pay is authorized; and garnishment **up to 15%** of Petitioner Bush's disposable pay thereafter. 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 11th day of April 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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