

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) [AWG]
Joseph Siniff, a/k/a) Docket No. **12-0348**
)
)
Joseph E. Siniff, Jr.,)
)
Petitioner) **Decision and Order**

Appearances:

Petitioner Joseph Siniff, also known as Joseph E. Siniff, Jr., representing himself (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 June 29, 2012. Joseph E. Siniff, Jr., the Petitioner (“Petitioner Siniff, Jr.”), 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 is represented by Michelle Tanner.

Summary of the Facts Presented

3. Petitioner Siniff, Jr.’s Earnings Statements (two) (filed June 13, 2012), plus completed “Consumer Debtor Financial Statement” with attached sheets (filed June 11, 2012), are admitted into evidence, together with the testimony of Petitioner Siniff, Jr., together with his Hearing Request dated March 2, 2012, and all accompanying documents (filed April 9, 2012).
4. USDA Rural Development’s Exhibits RX 1 through RX 12, plus Narrative, Witness & Exhibit List, were filed on May 23, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner. Also admitted into evidence is USDA Rural

Development's document filed on June 29, 2012.

5. Petitioner Siniff, Jr. bought a home in Michigan in 2005, borrowing \$96,900.00 to pay for it. RX 2. USDA Rural Development's position is that Petitioner Siniff, Jr. owes to USDA Rural Development **\$54,026.94** (as of May 21, 2012), in repayment of the United States Department of Agriculture / Rural Development / Rural Housing Service **Guarantee** (*see RX 1, esp. p. 2*) for the loan made in 2005 ("the debt"). The loan was made by AmeriFirst Financial Corporation and was sold to JP Morgan Chase Bank, N.A. (Chase Home Finance LLC being the servicing lender); the **Guarantee** remained in force.

6. After careful review of all of the evidence, I agree with USDA Rural Development's position. [The loan balance may have changed from the May 21, 2012 balance of \$54,026.94 (excluding collection costs), because garnishment was ongoing (*see RX 12, p. 1*); the balance may therefore have been reduced and may continue to change. As will be seen later in this Decision, **the balance will increase when amounts taken from Petitioner Siniff, Jr.'s pay are returned to him.**]

7. The **Guarantee** (RX 1) establishes an **independent** obligation of Petitioner Siniff, Jr., "I certify and acknowledge that if the Agency pays a loss claim on the requested loan to the lender, I will reimburse the Agency for that amount. If I do not, the Agency will use all remedies available to it, including those under the Debt Collection Improvement Act, to recover on the Federal debt directly from me. The Agency's right to collect is independent of the lender's right to collect under the guaranteed note and will not be affected by any release by the lender of my obligation to repay the loan. Any Agency collection under this paragraph will not be shared with the lender." RX 1, p. 2.

8. The Due Date of the last payment made was July 1, 2008. RX 7, p. 3. Petitioner Siniff, Jr. testified that his employer eliminated his job at the plant in Michigan and wanted him to go where he was needed; he took the job in the Richmond, Virginia facility as a result. Petitioner Siniff, Jr. testified that the home in Michigan wouldn't sell because of the high unemployment rates; no one could afford to borrow enough to buy it; numerous houses were empty. Petitioner Siniff, Jr. testified that when he called Chase to request help such as interest only payments, the Chase representative told him that since he was current, he could miss a couple of payments and then get back to Chase to request modifying the loan or interest only payments. Petitioner Siniff, Jr. testified that when they called back, Chase treated them like dirt. The foreclosure was initiated on January 26, 2009. RX 7, p. 3. The lender Chase (Chase Home Finance LLC) bid \$52,700.00 and acquired the home, which became REO (Real Estate Owned), at the Sheriff's sale on February 27, 2009. RX 3.

9. USDA Rural Development reimbursed the lender \$66,114.66 on July 1, 2010 (RX 7, p. 9). Then a recovery, from sale to a third party, yielded \$1,620.10 to reduce the debt. RX 9. The debt was then \$64,494.56, which is the amount USDA Rural Development seeks to recover from Petitioner Siniff, Jr. under the **Guarantee**. RX 9. RX 9 details the loss claim

paid under the ***Guarantee***, showing how the debt became \$64,494.56.

\$ 93,489.78	Unpaid Principal Balance
<u>\$ 10,949.93</u>	Unpaid Interest Balance
\$104,439.71	Principal & Interest Due
+ <u>\$ 7,115.82</u>	Lender Expenses to Sell Property
\$111,555.53	Total Debt Charged to Petitioner Siniff, Jr.
=====	
- <u>\$ 45,440.87</u>	Credits (includes liquidation value of \$39,600.00, RX 6)
\$ 66,114.66	Amount Due Before \$1,620.10 Recovery
=====	
- <u>\$ 1,620.10</u>	Recovery [the portion of the \$1,906.00 that went to USDA Rural Development; the other \$285.90 went to Chase. RX 8]
\$ 64,494.56	
=====	

RX 9, USDA Rural Development Narrative, and testimony.

10. Collections from Treasury (an ***offset***, which was an income tax refund from the co-borrower; plus garnishments from Petitioner Siniff, Jr.) applied to the debt (after collection fees are subtracted) leave **\$54,026.94** unpaid as of May 21, 2012 (excluding the potential remaining collection fees). *See RX 12.* Interest stopped accruing on the date of the liquidation appraisal, which was March 17, 2010 (*see RX 7, p. 4*).

11. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$54,026.94**, would increase the balance by \$15,127.55, to \$69,154.49. RX 12. [As indicated, **the balance will increase when amounts taken from Petitioner Siniff, Jr.'s pay are returned to him.**]

12. Petitioner Siniff, Jr. testified that he is currently flat on his back, bedridden, because his heel is fractured in four places. Until the swelling goes down, he cannot undergo the surgery he needs. The plan is to insert a metal plate.

13. Petitioner Siniff, Jr. testified that he has three children to support and is recently divorced. [References to his spouse on his Consumer Debtor Financial Statement are to his now former spouse.] Petitioner Siniff, Jr.'s child support obligation is more than \$1,000.00 per month. The child support for his oldest child, who is 17, is deducted as a payroll

deduction or garnishment from Petitioner Siniff, Jr.'s paycheck. Petitioner Siniff, Jr. testified that the garnishments to pay the USDA Rural Development debt put him behind in paying child support for his two younger children. [The Earnings Statements mistakenly refer to the garnishments as "Garnish: Stud. Loan". Petitioner Siniff, Jr. testified that there is no student loan; these are the garnishments to pay the USDA Rural Development debt.]

14. Petitioner Siniff, Jr. asks that the garnishments cease, and also that the amounts already garnished be refunded to him so that he can pay the child support for his two younger children that he was unable to pay because of the garnishments. Petitioner Siniff, Jr.'s Consumer Debtor Financial Statement (with attached sheets) filed June 11, 2012 shows that his current living expenses are reasonable (frugal, actually). Petitioner Siniff, Jr. is heavily burdened with debt, including roughly \$35,000.00 still owed for his attorneys' fees for the divorce (to various attorneys and to his parents to repay their payments to his attorneys). His current medical crisis will of course be costly. And he owes various amounts to his former wife; \$1,400.00 on back federal income taxes; back rent; payments on his pick-up truck; payments on loans against his 401 K accounts; and payments on medical bills and a credit card.

15. I have carefully considered Petitioner Siniff, Jr.'s request that the amounts already garnished be refunded to him. The garnishments began because Petitioner Siniff, Jr.'s Hearing Request was regarded as LATE. Pioneer Credit Recovery, Inc., in November 2011, was using an old address for him. Petitioner Siniff, Jr. testified that he had been at his current address (the one on his Hearing Request; the one on his Consumer Debtor Financial Statement) since about June or July 2011. Pioneer Credit Recovery, Inc., on January 23, 2012, used that correct address, indicating that a copy of the information that he had previously requested was enclosed. Petitioner Siniff, Jr. responded promptly, with documentation, as can be seen from his letter dated February 26, 2012, included in the accompanying documents to his Hearing Request dated March 2, 2012. The deadline for Petitioner Siniff, Jr. to submit his Hearing Request timely (December 9, 2011) had come and gone long before he got notice of the documents dated November 17, 2011. Petitioner Siniff, Jr. was responsible in his correspondence with Pioneer Credit Recovery, Inc. promptly upon his receiving a copy of the documents dated November 17, 2011 (he received the documents sometime from late January to early February 2012). Further, Petitioner Siniff, Jr. is in dire straits because of his current injury. Consequently, I order that the amounts taken from Petitioner Siniff, Jr.'s pay, through garnishment, be returned to him, even though his Hearing Request was regarded as LATE.

16. Garnishment at 15% of Petitioner Siniff, Jr.'s disposable pay would currently cause Petitioner Siniff, Jr. financial hardship. To prevent hardship, potential garnishment to repay the USDA Rural Development debt must be limited to **0%** of Petitioner Siniff, Jr.'s disposable pay through August 2013; then **up to 5%** of Petitioner Siniff, Jr.'s disposable pay beginning September 2013 through August 2015; then **up to 10%** of Petitioner Siniff, Jr.'s disposable pay beginning September 2015 through August 2017; then **up to 15%** of

Petitioner Siniff, Jr.'s disposable pay thereafter. 31 C.F.R. § 285.11.

17. Petitioner Siniff, Jr., you may want to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

18. I encourage **Petitioner Siniff, Jr. and the collection agency to negotiate** the repayment of the debt. Petitioner Siniff, Jr., 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 Siniff, Jr., you may want to request apportionment of debt between you and the co-borrower. Petitioner Siniff, Jr., 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. Petitioner Siniff, Jr., 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 wish to include someone else with you in the telephone call when you call to negotiate.

Findings, Analysis and Conclusions

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

20. Petitioner Siniff, Jr. owes the debt described in paragraphs 5 through 11.

21. Garnishment is authorized, but to prevent financial hardship shall be limited as follows: through August 2013, garnishment limited to **0%** of Petitioner Siniff, Jr.'s disposable pay; beginning September 2013 through August 2015 garnishment **up to 5%** of Petitioner Siniff, Jr.'s disposable pay; beginning September 2015 through August 2017 garnishment **up to 10%** of Petitioner Siniff, Jr.'s disposable pay; and thereafter, garnishment **up to 15%** of Petitioner Siniff, Jr.'s disposable pay. 31 C.F.R. § 285.11.

22. Any amounts collected through garnishment of Petitioner Siniff, Jr.'s pay prior to implementation of this Decision **shall be returned to Petitioner Siniff, Jr.**, and Petitioner Siniff, Jr. **shall first bring his child support obligations current** before spending the balance as he chooses.

23. Repayment of the debt may occur through *offset* of Petitioner Siniff, Jr.'s **income tax refunds** or other **Federal monies** payable to the order of Mr. Siniff, Jr.

Order

24. Until the debt is repaid, Petitioner Siniff, Jr. 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).

25. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment limited to **0%** of Petitioner Siniff, Jr.'s disposable pay through August 2013; then **up to 5%** of Petitioner Siniff, Jr.'s disposable pay beginning September 2013 through August 2015; then **up to 10%** of Petitioner Siniff, Jr.'s disposable pay beginning September 2015 through August 2017; then **up to 15%** of Petitioner Siniff, Jr.'s disposable pay thereafter. 31 C.F.R. § 285.11.

26. USDA Rural Development, and those collecting on its behalf, will be required to **return to Petitioner Siniff, Jr.** any amounts already collected through garnishment of Petitioner Siniff, Jr.'s pay, prior to implementation of this Decision. Petitioner Siniff, Jr. **shall first bring his child support obligations current** before spending the balance as he chooses.

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

Done at Washington, D.C.
this 3rd day of July 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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