

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) [AWG]
 Frank Black) Docket No. **12-0413**
)
 Petitioner) **Decision and Order**

Appearances:

Petitioner Frank Black, also known as Frank Black, Jr., representing himself (appearing *pro se*); and

Giovanna Leopardi, 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 July 11, 2012. Frank Black, also known as Frank Black, Jr., the Petitioner (“Petitioner Black”), 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 Giovanna Leopardi.

Summary of the Facts Presented

3. Petitioner Black’s completed “Consumer Debtor Financial Statement” (filed June 28, 2012) is admitted into evidence, together with the testimony of Petitioner Black, together with his Hearing Request dated March 14, 2012.

4. USDA Rural Development’s Exhibits RX 1 through RX 11, plus Narrative, Witness & Exhibit List (filed June 13, 2012) are admitted into evidence, together with the testimony of Giovanna Leopardi.

5. Petitioner Black bought a home in Michigan in 2003, borrowing \$73,000.00 to pay for it (\$68,000.00 for the home; \$5,000.00 for closing costs, etc.). RX 1, 2. The loan was

made by Chase Manhattan Mortgage Corporation, succeeded by JP Morgan Chase Bank, N.A., with the servicing lender being Chase Home Finance, LLC. A loan modification in 2008 added arrearages to principal: the modified unpaid principal became \$71,798.36 in 2008. RX 2, esp. p. 8.

6. USDA Rural Development's position is that Petitioner Black owed to USDA Rural Development \$54,719.49 as the loss claim amount that USDA Rural Development paid to the lender on April 1, 2011. RX 6, p. 13. USDA Rural Development paid the loss claim pursuant to the United States Department of Agriculture / Rural Development / Rural Housing Service *Guarantee* (see RX 1, esp. p. 2) for the loan made in 2003 ("the debt"). After careful review of all of the evidence, I agree with USDA Rural Development's position.

7. The *Guarantee* (RX 1) establishes an **independent** obligation of Petitioner Black, "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 December 1, 2008. RX 6, p. 7. Petitioner Black testified that he was on disability for about 5 months in 2008 and/or 2009. Further, his wife lost her job. Foreclosure was initiated on May 5, 2009. RX 6, p. 8. 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 June 12, 2009. RX 3. See also RX 6, p. 8. The lender Chase marketed the home but did not accomplish a sale within the prescribed period. A liquidation appraisal was done on July 2, 2010 (see RX 6, p. 9).¹

9. USDA Rural Development reimbursed the lender \$54,719.49 on April 1, 2011. RX 6, p. 13. The \$54,719.49 is the amount USDA Rural Development seeks to recover from Petitioner Black under the *Guarantee*. RX 7. RX 7 details the loss claim paid under the *Guarantee*, showing how the debt became \$54,719.49.

\$ 68,056.05	Unpaid Principal Balance
\$ 6,479.31	Unpaid Interest Balance
\$ 3,553.80	Protective Advance to Pay Taxes and Insurance
\$ <u>66.71</u>	Interest on Protective Advance

¹ The liquidation value, used because the home did not sell within the prescribed period, was only \$22,000.00. RX 5, pp. 7, 8; RX 6, p. 9. The sale price was apparently only \$9,500.00. RX 6, p. 3.

\$ 78,155.87	Due from Borrower BEFORE Lender Expenses Added
+ \$ <u>4,712.94</u>	Lender Expenses to Sell Property
\$ 82,868.81	Total Debt Charged to Petitioner Black
=====	
- \$ <u>28,149.32</u>	Credits (includes liquidation value of \$22,000.00, RX 6, exp. p. 9)
\$ 54,719.49	Loss Claim
=====	

RX 7, USDA Rural Development Narrative, and testimony.

10. Collections from Treasury (an *offset*, which was an income tax refund; plus garnishments from Petitioner Black) applied to the debt (after collection fees are subtracted) leave **\$46,570.00** unpaid as of May 18, 2012 (excluding the potential remaining collection fees). *See* RX 10. Interest stopped accruing on the date of the liquidation appraisal, which was July 2, 2010 (*see* RX 6, p. 9). The debt amount of **\$46,570.00** as of May 18, 2012 (excluding collection costs), may have changed, because garnishment was ongoing (*see* RX 10, p. 1); the balance may therefore have been reduced and may continue to change.

11. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$46,570.00**, would increase the balance by \$13,039.60, to \$59,609.60. RX 10, esp. p. 2.

12. Petitioner Black's Consumer Debtor Financial Statement and testimony show that his current living expenses for himself, his wife, and 3 children, are reasonable. Garnishment at 15% of Petitioner Black's disposable pay is currently causing Petitioner Black and his wife and children financial hardship. To prevent hardship, potential garnishment to repay the USDA Rural Development debt must be limited to **0%** of Petitioner Black's disposable pay through August 2014; then **up to 5%** of Petitioner Black's disposable pay beginning September 2014 through August 2015; then **up to 10%** of Petitioner Black's disposable pay beginning September 2015 through August 2016; then **up to 15%** of Petitioner Black's disposable pay thereafter. 31 C.F.R. § 285.11.

13. Petitioner Black, you may want to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

14. I encourage **Petitioner Black and the collection agency** to **negotiate** the repayment

of the debt. Petitioner Black, 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 Black, 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 Black, 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

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

16. Petitioner Black owes the debt described in paragraphs 5 through 11.

17. To prevent financial hardship, garnishment shall be limited as follows: through August 2014 garnishment is limited to **0%** of Petitioner Black's disposable pay; beginning September 2014 through August 2015 garnishment is limited to **up to 5%** of Petitioner Black's disposable pay; beginning September 2015 through August 2016 garnishment is limited to **up to 10%** of Petitioner Black's disposable pay; and thereafter, garnishment **up to 15%** of Petitioner Black's disposable pay is authorized. 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 Black's pay, to be returned to Petitioner Black.

19. Repayment of the debt may occur through **offset** of Petitioner Black's **income tax refunds** or other **Federal monies** payable to the order of Mr. Black.²

Order

20. Until the debt is repaid, Petitioner Black 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).

² Petitioner Black, your spouse is not obligated under the **Guarantee**. Consequently, if you file a joint income tax return and any of the refund taken is your spouse's, you will want to call Treasury at **1-888-826-3127** to ask how your "injured spouse" may obtain her refund back. You will want to pursue the "injured spouse" claim also if the refund taken in February 2012 had any of your spouse's refund in it.

21. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment limited to **0%** of Petitioner Black's disposable pay through August 2014; then **up to 5%** of Petitioner Black's disposable pay beginning September 2014 through August 2015; then **up to 10%** of Petitioner Black's disposable pay beginning September 2015 through August 2016; then **up to 15%** of Petitioner Black'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 July 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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