

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	[AWG]
Eugene Cranmer)	Docket No. 12-0365
)	
Petitioner)	Decision and Order

Appearances:

none, for Eugene Cranmer, the Petitioner; 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 was held as scheduled by telephone on August 8, 2012. Eugene Cranmer (“Petitioner Cranmer”) did not participate. (Petitioner Cranmer did not participate by telephone: Petitioner Cranmer provided no telephone number on his Hearing Request; and in response to my Order issued June 12, 2012, Petitioner Cranmer provided no telephone number where he 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 Cranmer owes to USDA Rural Development a balance of **\$50,616.31** (as of June 18, 2012) in repayment of a United States Department of Agriculture / Rural Development / Rural Housing Service *Guarantee* (see RX 1, esp. p. 2) for a loan made on July 5, 2007, by Wells Fargo Bank, N.A., for a home in New York, the balance of which is now unsecured (“the debt”). See USDA Rural Development Exhibits RX 1 through RX 10, plus Narrative, Witness & Exhibit List (filed June 22, 2012), which are admitted into evidence, together with the testimony of Michelle Tanner.

4. This *Guarantee* establishes an **independent** obligation of Petitioner Cranmer, “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.

5. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$50,616.31** would increase the current balance by \$14,172.57, to \$64,788.88. *See* USDA Rural Development Exhibits, esp. RX 10, p. 2.

6. The amount Petitioner Cranmer borrowed was \$75,849.00 on July 5, 2007. RX 2. Petitioner Cranmer defaulted on the mortgage loan payments to Wells Fargo Bank, N.A. (“Wells Fargo”), and the loan was accelerated for foreclosure. The Due Date of Last Payment Made was July 1, 2008. RX 6, p. 4. Foreclosure was initiated on February 10, 2009. A foreclosure sale was held on March 10, 2010, at which Wells Fargo acquired the property back into inventory with the highest bid, \$59,500.00. RX 3.

7. The “As Is” value from one appraisal as of March 19, 2010 was \$59,000.00. RX 4, RX 6, p. 5. The “As Is” Value per the Brokers Price Opinion (BPO) as of March 13, 2010 was \$49,900.00. RX 6, p. 5. Wells Fargo placed the home “as is” on the market for resale for \$59,000.00. RX 5, pp. 1-3. Thus, the Original List Price was \$59,000.00. The Final List Price was \$47,642.50. The property sold to a third party for \$43,500.00, with the closing date being August 3, 2010. RX 5, pp. 6-9.

8. Mr. Cranmer stated in his Hearing Request: “Never dealt with Department of Agriculture. Don’t know what it for.” But Mr. Cranmer had been contacted by the Department of Agriculture by letter dated August 13, 2011, explaining the loss claim that the Department of Agriculture, Rural Development, paid to Wells Fargo on March 9, 2011 in the amount of \$51,922.41. RX 8, RX 6, p. 11, and USDA Rural Development Narrative. Thus \$51,922.41, the amount USDA Rural Development paid, is the amount USDA Rural Development recovers from Petitioner Cranmer under the *Guarantee*. No more interest accrues; no interest, no penalties. The interest stopped accruing when Wells Fargo timely submitted its loss claim.

9. Collections by Treasury from Petitioner Cranmer in 2012, *offsets*, applied to reduce the debt (after the collection fees were subtracted) leave **\$50,616.31** unpaid as of June 18, 2012 (excluding the potential remaining collection fees). *See* RX10, esp. p. 1.

10. Although my Hearing Notice and Prehearing Deadlines, dated June 12, 2012, invited financial disclosure from Petitioner Cranmer, such as filing a Consumer Debtor Financial Statement, he filed nothing. Thus I cannot calculate Petitioner Cranmer'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.) 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 Cranmer's disposable pay creates a financial hardship.

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

Discussion

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

14. Petitioner Cranmer owes the debt described in paragraphs 3 through 9.

15. **Garnishment up to 15% of Petitioner Cranmer's disposable pay** is authorized. There is no evidence that financial hardship will be created by the garnishment. 31 C.F.R. § 285.11.

16. **No refund** to Petitioner Cranmer 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 Cranmer's **income tax refunds** or other **Federal monies** payable to the order of Mr. Cranmer.

Order

18. Until the debt is repaid, Petitioner Cranmer 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 Cranmer'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 Cranmer's pay, to be returned to Petitioner Cranmer.

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

Done at Washington, D.C.
this 8th day of August 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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