

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) [AWG]
Larry V. Roscoe) Docket No. **12-0648**
)
Petitioner) **Decision and Order**

Appearances:

Larry V. Roscoe, the Petitioner, 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 November 7, 2012. Larry V. Roscoe, the Petitioner (“Petitioner Roscoe”) participated, representing himself (appearing *pro se*).
2. Rural Development, an agency of the United States Department of Agriculture (USDA), the Respondent (“USDA Rural Development”), participated, represented by Michelle Tanner.

Summary of the Facts Presented

3. Petitioner Roscoe’s letter dated August 30, 2012 is admitted into evidence, together with the testimony of Petitioner Roscoe.
4. USDA Rural Development’s Exhibits RX 1 through RX 6, plus Narrative, Witness & Exhibit List, filed on October 9, 2012, are admitted into evidence, together with the testimony of Michelle Tanner. Also admitted into evidence is RX 7, FAXed and filed on November 7, 2012.

5. Petitioner Roscoe owed to USDA Rural Development a balance of **\$4,773.37** (as of November 7, 2012), in repayment of two United States Department of Agriculture / Farmers Home Administration loans, for a home in Pennsylvania. The balance of the two loans (“the debt”) is now unsecured. Petitioner Roscoe’s income tax refunds have been *offset* several years (beginning in 2001), and garnishment began in August or September 2012, so the balance Petitioner Roscoe owes to USDA Rural Development has repeatedly been reduced. *See* USDA Rural Development Exhibit RX 7, especially p. 2.

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$4,773.37** would increase the current balance by \$1,336.54, to \$6,109.91. *See* RX 7, p. 2.

7. Petitioner Roscoe’s obligation to repay the loans was established on June 30, 1992, when he and his former wife (then, Tammy E. Roscoe) assumed one loan and borrowed a second loan. The total they owed on June 30, 1992 was \$76,491.19 (RX 1, p. 5). The debt was Petitioner Roscoe’s and his co-borrower’s joint-and-several obligation. Each of them was legally liable to repay USDA Rural Development. Payments were not made as required. Due to monetary default, a Notice of Acceleration and Intent to Foreclose was sent to Petitioner Roscoe on November 2, 1998 (RX 2, pp. 1-3). The Notice showed \$75,367.94 unpaid principal (for both loans together) and \$3,721.18 unpaid interest (which did not include both loans). *But see* RX 6, p. 1, which, although calculated as of more than 8 months later, correctly accounts for accrued interest on both loans.

8. Petitioner Roscoe testified that he wanted to hold onto the house. He testified that he was going through a divorce, and he was the only one working. He testified that a gentleman from Rural Housing in York talked to him and indicated that Rural Housing would work with him. But, his former wife would not work with him, and the home was sold in a short sale.

9. No payments were being made. The “next payment due date” was March 28, 1996. RX 2, p. 7. The home sold for \$74,900.00 on July 16, 1999. More than three years’ worth of interest had accrued and not been paid - - from March 28, 1996 to July 16, 1999. What else was not being paid were real estate taxes and insurance. By the time the home was sold on July 16, 1999, the debt had grown to \$97,262.17 (both loans together, *see* RX 6, p. 1):

\$ 75,367.94	Principal Balance prior to sale
\$ 8,082.19	Interest Balance prior to sale
\$ 1,132.89	Negative Escrow Balance
\$ 12,623.15	Recoverable Costs, Fees (unpaid taxes, insurance, maintenance, etc.)
\$ <u>56.00</u>	Interest on Costs, Fees
\$ 97,262.17	Total Amount Due (on both loans)

RX 6, p. 1; and the testimony of Michelle Tanner.

10. Proceeds from sale of the home (\$73,402.00) paid (a) all the Recoverable Costs and Fees (\$12,623.15); (b) all the Interest on Costs and Fees (\$56.00); (c) all the Negative Escrow Balance (\$1,132.89); (d) all the Interest (\$8,082.19); and (e) all the principal on only one (\$37,537.72) of the two loans (the older loan, the one that had been assumed). Petitioner Roscoe also benefitted from a \$1,193.62 Refund and return of \$1,498.00, a 2% Down Payment. That left \$16,661.67 to be applied on the principal of the newer loan, the one that Petitioner Roscoe and his former wife borrowed as a new loan on June 30, 1992.

11. What was still owed after all those proceeds and refunds had been applied? Part of the principal balance (\$21,168.55) on the newer loan was still owed. No interest was owed though; additional interest has not been required after July 16, 1999. Once the short sale proceeds were applied on the loan, interest stopped accruing.

12. Petitioner Roscoe's loan balance was forwarded to U.S. Treasury for collection on April 12, 2002. RX 3, p. 26. Petitioner Roscoe's loan balance had been reduced even before the loan went to Treasury. *See* RX 6, p. 1. Numerous *offsets* beginning in 2001 (and an Escrow Refund) have reduced the debt to **\$4,773.37** unpaid as of November 7, 2012 (excluding the potential remaining collection fees). *See* RX 7, especially p. 2, and the testimony of Michelle Tanner. *See also* RX 6, p. 1.

13. Garnishment to repay "the debt" (*see* paragraph 5) in the amount of 15% of Petitioner Roscoe's disposable pay has created financial hardship for Petitioner Roscoe and his wife. (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.) 31 C.F.R. § 285.11. Petitioner Roscoe's letter dated August 30, 2012, joined by his wife, shows that he is diabetic and requires medications. The letter states that garnishments would cause their home to be foreclosed upon.

Discussion

14. Petitioner Roscoe, as I told you during the Hearing, I am proud of you for the steady progress you have made getting the debt repaid. The \$21,168.55 balance that remained after the short sale has been brought down to a **\$4,773.37** balance (excluding the potential remaining collection fees), mostly because of your income tax refunds. Petitioner Roscoe, you may choose to telephone Treasury's collection agency to **negotiate** the repayment of the remaining debt. Petitioner Roscoe, 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 Roscoe, 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 ask that **the**

debt be apportioned between you and your co-borrower, your former wife. Petitioner Roscoe, 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 Roscoe, you may wish to include someone else with you in the telephone call if you call to negotiate.

Findings, Analysis and Conclusions

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

16. Petitioner Roscoe owes the debt described in paragraphs 5 through 12.

17. To prevent financial hardship, **garnishment is not authorized through 2014**; thereafter, garnishment is authorized, **up to 5%** of Petitioner Roscoe's disposable pay. 31 C.F.R. § 285.11.

18. **No refund** to Petitioner Roscoe of monies already collected or collected prior to implementation of this Decision is appropriate, and I am **NOT** ordering any amounts already collected prior to implementation of this Decision, whether through *offset* or garnishment of Petitioner Roscoe's pay, to be returned to Petitioner Roscoe.

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

Order

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

21. USDA Rural Development, and those collecting on its behalf, are **not** authorized to proceed with garnishment of Petitioner Roscoe's disposable pay **through 2014**. **Beginning January 2015**, garnishment **up to 5%** of Petitioner Roscoe's disposable pay is authorized. 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 18th day of December 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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