

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AWG]
) Docket No. **13-0041**
 Robert Bellavance)
)
 Petitioner) **Decision and Order**

Appearances:

Robert J. Bellavance, 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 January 22 and February 13, 2013. Robert J. Bellavance, the Petitioner (“Petitioner Bellavance”) participated in February, representing himself (appearing *pro se*).
2. Rural Development, an agency of the United States Department of Agriculture (USDA), the Respondent (“USDA Rural Development”), participated both in January and in February, represented by Michelle Tanner.

Summary of the Facts Presented

3. Petitioner Bellavance’s Hearing Request dated October 1, 2012 is admitted into evidence, together his Consumer Debtor Financial Statement and Earnings Statements (filed February 12, 2013), together with the testimony of Petitioner Bellavance.
4. USDA Rural Development’s Exhibits RX 1 through RX 7, plus Narrative, Witness & Exhibit List (filed on November 16, 2012), are admitted into evidence, together with RX 8 and RX 9 (filed on December 4, 2012), together with the testimony of Michelle Tanner.

5. As of November 2, 2012, Petitioner Bellavance owed to USDA Rural Development a balance of **\$52,411.75** (RX 7, p. 2) in repayment of the United States Department of Agriculture / Farmers Home Administration loan made in 1992 to Debra J. Tavernier and assumed in 1995 by Petitioner Bellavance and his then-wife and co-borrower, Jolynn Bellavance, for a home in Maine. The loan balance (“the debt”) is now unsecured.

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$52,411.75** would increase the current balance by \$14,675.29, to \$67,087.04. RX 7, p. 2.

7. Petitioner Bellavance and his then-wife and co-borrower, Jolynn Bellavance, borrowed an additional \$2,480.00 in 1995 (RX 1, p. 3-4) to finance the home. Petitioner Bellavance has already single-handedly repaid that loan in full (RX 7, p. 7).

8. The amount borrowed (both loans) in 1995 was \$81,280.00 [\$78,800.00 on the Assumption (RX 8); and \$2,480.00 on the second loan (RX 1, p. 3-4)]. The payments were not kept current, and in 1997, both loans were reamortized. RX 9. The loans had become delinquent, and reamortization made the loans current, by adding the delinquent amounts to the principal balances. The principal amounts due became \$81,480.19 (RX 9, p. 1); and \$2,452.05 (RX 9, p. 3). The reamortizations did not change the amounts owed.

9. Again, the loans became delinquent. Interest was not paid current for years. Taxes and insurance were not paid current for years. The “next payment due date” was October 12, 1998, meaning that more than 3 years of non-payments had added up by the time of the foreclosure sale. The home was sold for \$60,000.00 in the foreclosure sale on January 15, 2002; the debt then totaled \$115,405.06. RX 6.

\$ 82,826.51	Principal Balance (both loans)
\$ 22,441.40	Interest Balance (both loans)
<u>\$ 10,137.15</u>	Recoverable costs (such as unpaid taxes, insurance, foreclosure costs)
\$115,405.06	Total Amount Due
=====	

RX 6 shows the precise accounting; the summary shown here is a simplification.

10. Interest stopped accruing (either on the date of the foreclosure sale, or when the sale proceeds were applied on the loan), in about January 2002. No additional interest has accrued since then, and none will accrue, which makes repaying the debt more manageable.

11. Proceeds from sale of the home at the foreclosure sale (\$60,000.00) paid all but \$55,405.06 [**\$52,411.75** on the Assumption; and \$2,993.31 on the second loan]. Both loans

were referred to Treasury for collection in September 2005. Treasury chose to collect the second loan first; Petitioner Bellavance has paid-in-full the second loan. RX 7, pp. 4-7.

12. Treasury, which was ready to start collecting the **\$52,411.75** (the Assumption) in September 2012, wrote to Petitioner Bellavance. Treasury identifies the balance as \$67,087.04, as it may require \$67,087.04 to pay the **\$52,411.75**. RX 7, p. 2. [The potential collection fees for the **\$52,411.75** to become paid-in-full, add another \$14,675.29. See paragraph 6.]

13. As between Petitioner Bellavance and his then-wife and co-borrower, Jolynn Bellavance, there may be recourse for one against the other, depending on whether their divorce orders specified who would pay this debt or whether other legal principles apply to determine which of them is responsible for what portion of this debt. If either of them is required to pay sums that are the responsibility of the other, the one who pays may be entitled to reimbursement from the other. Either way, USDA Rural Development is not hindered from collecting in full from either of them. The debt remains Petitioner Bellavance's and his co-borrower's joint-and-several obligation.

14. Petitioner Bellavance owes the balance of **\$52,411.75** (as of November 2, 2012, excluding the potential remaining collection fees), and USDA Rural Development may collect that amount from him. Or, USDA Rural Development may collect that amount from the former Jolynn Bellavance; or some from each of them.

15. Petitioner Bellavance's Consumer Debtor Financial Statement and testimony show that he is heavily in debt. Petitioner Bellavance is negotiating the terms of a divorce from his current wife, and he may be agreeing to terms he cannot afford. He testified that his attorney's fees are accumulating, more than \$2,700.00 for the first year of work on the divorce. Petitioner Bellavance's Consumer Debtor Financial Statement shows that he owes the Internal Revenue Service more than \$10,000.00 in delinquent federal income taxes; he owes the State of Maine more than \$1,000.00 in delinquent state income taxes; he owes on motor vehicles more than they are worth; and he owes more than \$3,000.00 on a personal loan. These obligations are in addition to the **\$52,411.75** he owes to USDA Rural Development, in addition to his reasonable and necessary living expenses.

16. Petitioner Bellavance is paid every week. Garnishment at 15% of Petitioner Bellavance's disposable pay would currently cause Petitioner Bellavance financial hardship. To ease the hardship, potential garnishment to repay the USDA Rural Development debt shall be limited to **0%** of Petitioner Bellavance's disposable pay through August 2013; then **up to 5%** of Petitioner Bellavance's disposable pay beginning September 2013 through August 2015; then **up to 10%** of Petitioner Bellavance's disposable pay beginning September 2015 through August 2017; then **up to 15%** of Petitioner Bellavance's disposable pay thereafter. 31 C.F.R. § 285.11.

Discussion

17. Petitioner Bellavance, after you receive my decision, and Treasury has had time to receive a copy, you may want to call Treasury's collection agency to **negotiate** the repayment of the debt. Petitioner Bellavance, 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 Bellavance, you may want to request **apportionment of debt between you and the co-borrower**. Petitioner Bellavance, 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

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

19. Petitioner Bellavance owes the debt described in paragraphs 5 through 14.

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

21. I am **not** ordering any amounts already collected prior to implementation of this Decision, whether through **offset** or garnishment of Petitioner Bellavance's pay, to be returned to Petitioner Bellavance.

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

Order

23. Until the debt is repaid, Petitioner Bellavance 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).

24. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment limited to **0%** of Petitioner Bellavance's disposable pay through August 2013; then **up to 5%** of Petitioner Bellavance's disposable pay beginning September 2013 through August 2015; then **up to 10%** of Petitioner Bellavance's disposable pay beginning September 2015 through August 2017; then **up to 15%** of Petitioner Bellavance'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 14th day of February 2013

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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