

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) [AWG]
Jennifer L. Bennett) Docket No. **13-0129**
)
Petitioner) **Decision and Order**

Appearances:

Jennifer L. Bennett, representing herself (appearing *pro se*), the Petitioner; 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 April 19, 2013. Jennifer L. Bennett, the Petitioner (Petitioner Bennett), participated, representing herself (appearing *pro se*). Accompanying Petitioner Bennett were her witnesses: her mother Faye Bennett and her sister Lisa Kleven.

2. Rural Development, an agency of the United States Department of Agriculture (USDA), the Respondent (“USDA Rural Development”), participated, represented by Giovanna Leopardi.

Summary of the Facts Presented

3. Petitioner Bennett’s exhibits, documenting fiancé Zacharias (Zack) Thompson’s disability since February 1, 2006; documenting Petitioner Bennett’s physical impairments in 2009 including her right upper extremity, right chest and neck; and documenting the need for postponement of the telephone hearing so that she and her witnesses would not miss work (filed February 7, 2013); together with her Consumer Debtor Financial Statement, pay stub copies, and other financial information (filed February 5, 2013); together with her Hearing Request (dated November 28, 2012); are admitted into evidence, together with the testimony of Petitioner Bennett and Lisa Kleven.

4. USDA Rural Development's Exhibits RX 1 through RX 5, plus Narrative, Witness & Exhibit List, filed January 17, 2013, are admitted into evidence, together with the testimony of Giovanna Leopardi.
5. The amount Petitioner Bennett borrowed from USDA Rural Housing Service (a part of USDA Rural Development) in December 2004 was \$75,474.00. RX 1. Petitioner Bennett borrowed to buy a home in Michigan. The balance is now unsecured ("the debt").
6. USDA Rural Development's position is that Petitioner Bennett owed to USDA Rural Development **\$83,752.47** (as of January 15, 2013), in repayment of the United States Department of Agriculture / Rural Development / Rural Housing Service loan. RX 5, pp. 1-2. The **\$83,752.47** was referred to U.S. Treasury for collection on September 3, 2012. RX 3, p. 1; RX 5, especially p. 1. The **\$83,752.47** does not include the potential remaining collection fees which Treasury and Treasury's collection agents would charge (RX 5, especially p. 2).
7. Petitioner Bennett's position is that she owes nothing to USDA Rural Development, which took and resold the house (Hearing Request). Petitioner Bennett testified that she vacated the house before Christmas 2009 because she was instructed by a USDA Rural Development employee to vacate the house because there was nothing more USDA Rural Development could do to assist her with her financial problems. Petitioner Bennett testified that she sent the keys back to USDA Rural Development. Petitioner Bennett testified that she was shocked when Treasury contacted her in the fall of 2012 to collect the debt, because she had heard nothing from USDA Rural Development about owing anything during the years in-between (nearly 3 years).
8. Not until February 2012 was the house sold. A reference in a computer-generated record shows that the foreclosure sale was completed on February 23, 2012, and that the property was sold to a third party for \$13,000.00. RX 3, p. 9.
9. The evidence includes no appraisals. There is a reference in a computer-generated record to \$75,000.00 being the Appraised Value. RX 2, p. 8. USDA Rural Development's bid at the foreclosure sale was \$8,600.00. RX 2, p. 8.
10. USDA Rural Development accelerated the loan due to monetary default as a first step toward foreclosure on May 14, 2009. RX 2, pp. 1-5. At that time the unpaid principal was \$72,394.63. The unpaid interest was \$4,395.58. More was owed than the principal and the accrued interest: property taxes continued to come due; insurance premiums continued to come due. The computer-generated entries concerning "forceplace warning letters" sent to the borrower on February 15, 2010 and March 22, 2010 are not clear to me.

11. The lawyer began work in October 2011. RX 4, p. 9. The evidence does not explain the delays in proceeding to foreclosure after May 14, 2009 into late 2011.
12. The Notice of Mortgage Foreclosure Sale states that \$96,159.67 was claimed due as of January 25, 2012. RX 2, p. 6. The foreclosure sale was held February 23, 2012. RX 2, p. 8. Another reference in a computer-generated record shows an entry dated 05/23/12 stating that the foreclosure sale funds were posted as of the sale date 02/23/12.
13. The evidence provides no documentation that Petitioner Bennett was given an adequate opportunity for “debt settlement” with USDA Rural Development. A computer-generated record shows an entry for 06/28/12 that the \$83,752.47 balance had been charged off and debt settlement processed. RX 3, p. 2. Other entries, same date, 06/28/12, show that no debt settlement application had been received to date, and that notice of decision was sent (to the foreclosed house address). There is no record of an attempt to determine Petitioner Bennett’s current address. The Debt Settlement Action Memo dated 06/28/12 (RX 4, p. 14) does not persuade me that USDA Rural Development gave Petitioner Bennett the opportunity to debt settle.

Findings, Analysis and Conclusions

14. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Bennett and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.
15. Ordinarily, Petitioner Bennett would be responsible to pay foreclosure costs and costs to maintain and sell the house, in addition to principal, accrued interest, property taxes, and insurance premiums that had come due, and late charges, and the unpaid water/sewer bills. The total, \$96,752.47, is broken down at RX 4, p. 1. Subtracting the \$13,000.00 Proceeds from the Sale, the balance was **\$83,752.47**.
16. Here, though, three factors cause me to conclude there is no valid debt:
- (a) The \$13,000.00 Proceeds from the Sale are not adequate, particularly with no appraisals in the evidence and a reference in a computer-generated record to \$75,000.00 being the Appraised Value. RX 2, p. 8. USDA Rural Development’s bid at the foreclosure sale was \$8,600.00. RX 2, p. 8.
 - (b) USDA Rural Development took too long to liquidate the property after instructing Petitioner Bennett to vacate the house. Paragraphs 10 and 11.
 - (c) The evidence is inadequate that USDA Rural Development gave Petitioner Bennett the opportunity to debt settle. Paragraph 13.

17. Petitioner Bennett does **NOT** owe a valid debt to USDA Rural Development; the debt described in paragraphs 4 through 13 should and will be **canceled**.
18. Garnishment is **not** authorized. **Offset** of Petitioner Bennett's **income tax refunds** or other **Federal monies** payable to the order of Ms. Bennett is **not** authorized.
19. Any amounts collected from Petitioner Bennett, including any collections from Treasury **shall be returned to Petitioner Bennett**.

Order

20. USDA Rural Development shall cancel the debt as to Petitioner Bennett.
21. USDA Rural Development, and those collecting on its behalf, shall **return to Petitioner Bennett** any amounts already collected through garnishment or **offset**.

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

Done at Washington, D.C.
this 30th day of April 2013

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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