

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	AWG Docket No. 10-0388
Kevin Netzel)	
)	
Petitioner)	Decision and Order

1. The hearing, by telephone, was held on October 28, 2010; on November 1, 2010; and on March 1, 2011. Kevin Netzel, also known as Kevin J. Netzel, the Petitioner (“Petitioner Netzel”), participated in each segment of the hearing.

2. Rural Development, an agency of the United States Department of Agriculture (USDA), is the Respondent (“USDA Rural Development”) and was represented by Mary E. Kimball in each segment of the hearing, joined by Gene Elkin for the final segment. The address for USDA Rural Development for this case is

Mary E. Kimball, Branch Accountant
USDA / RD New Program Initiatives Branch
Bldg 105 E, FC-22, Post D-2
4300 Goodfellow Blvd
St Louis MO 63120-1703

mary.kimball@stl.usda.gov 314.457.5592 phone
314.457.4426 FAX

Summary of the Facts Presented

3. Petitioner Netzel owes to USDA Rural Development a balance of **\$17,803.53** (as of 09/10/2010), in repayment of a United States Department of Agriculture / Rural Housing Service **Guarantee** (see RX-1, esp. p. 2) for a loan made in 2004, the balance of which is now unsecured (“the debt”). Petitioner Netzel borrowed to buy a home in Minnesota. See USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed September 17, 2010), which are admitted into evidence, together with the testimony of Mary Kimball and Gene Elkin.

4. This *Guarantee* establishes an **independent** obligation of Petitioner Netzel, “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 **\$17,803.53** would increase the current balance by \$5,341.06, to \$23,144.59. *See* USDA Rural Development Exhibits, esp. RX 6.

6. Petitioner Netzel’s Consumer Debtor Financial Statement and the payoff letter from an attorney dated in March 2007 (filed October 1, 2010); and Petitioner Netzel’s pay stub dated 10/20/2010 and Settlement documents from April 2007 (filed October 29, 2010), are admitted into evidence, together with the Petitioner Netzel’s testimony.

7. The amount Petitioner Netzel borrowed from Wells Fargo Home Mortgage, Inc. was \$106,000.00 in 2004. By the time of the foreclosure sale in December 2006, that debt had grown to \$113,473.45. RX 3. At the foreclosure sale Wells Fargo bid an amount less than the debt amount; Wells Fargo bid in \$85,000.00. There was no higher bid.

8. The amount to redeem the property from Wells Fargo was based on the bid amount (\$85,000.00), plus the interest and expenses allowed by Minnesota statute; it was not based on the debt amount at foreclosure (\$113,473.45). The redemption process did not repay Wells Fargo in full. Following the redemption process, Wells Fargo’s “Net Loss Amount” was \$20,312.53, which USDA Rural Development paid to Wells Fargo. RX 2, p. 6. It is this loss claim (\$20,312.53) that established Petitioner Netzel’s debt to USDA Rural Development under the *Guarantee*.

9. After Petitioner Netzel redeemed and sold the property, he was credited with the payoff to Wells Fargo (\$92,618.75), plus estimated insurance refund (\$542.17), for a total credit against the \$113,473.45 debt amount of \$93,160.92. The math is shown on the next page.

10. Petitioner Netzel owed Wells Fargo, in December 2006, \$113,473.45. RX 3.

\$103,435.92	Unpaid Principal Balance
\$ 6,570.73	Accrued Interest Owed (\$6,500.17 + \$70.56)
\$ 1,200.43	Protective Advances (i.e. taxes and insurance)
<u>\$ 6.87</u>	Interest on Protective Advances
\$111,213.95	Amount Due prior to sale
+ <u>\$ 2,259.50</u>	Lender Foreclosure Fees & Costs & Property Inspection
\$113,473.45	Debt Charged to Petitioner Netzel

See RX 3, also RX 2.

11. Petitioner Netzel was credited, in April 2007, with \$93,160.92. RX 3.

\$ 92,618.75	payoff to Wells Fargo
+ <u>\$ 542.17</u>	estimated insurance refund
\$ 93,160.92	Credits to Petitioner Netzel

See RX 3, also RX 2. By redeeming and selling, Petitioner Netzel kept down the loss, and he received back some cash from the sale. I commend Petitioner Netzel for redeeming and selling the property.

12. The difference between Petitioner Netzel's debt and his credits, was \$20,312.53.

\$113,473.45	debt as of foreclosure sale (December 2006)
- <u>\$ 93,160.92</u>	credits as of sale of redeemed property (April 2007)
\$ 20,312.53	Loss claim

Petitioner Netzel owed USDA Rural Development \$20,312.53, which is the amount USDA Rural Development paid the lender, on June 29, 2007. RX 2, p. 7.

13. Petitioner Netzel has since paid the balance down to **\$17,803.53** as of 09/10/2010 (not including "Potential Treasury fees"). RX 5, RX 6.

14. The evidence regarding Petitioner Netzel's disposable pay and other 31 C.F.R. § 285.11 factors persuades me that Petitioner Netzel's disposable pay does support garnishment. Petitioner Netzel's disposable pay is about \$450.00 per week, or about \$2,000.00 per month. Garnishment, up to 15% of Petitioner Netzel's disposable pay, could yield about \$300.00 per month in payment on the "the debt." *See* paragraph 3. Petitioner Netzel owes, in addition to "the debt" to USDA Rural Development described here, about

\$4,500.00 in student loans and about \$6,000.00 on his motor vehicle. Petitioner Netzel's reasonable and necessary living expenses are about \$1,600.00 per month, including his student loan payment and his motor vehicle payment.

Discussion

15. I encourage **Petitioner Netzel** to **negotiate promptly** the repayment of the debt. Petitioner Netzel, you may choose to offer to compromise the debt for an amount you are able to pay, to settle the claim for less.

Findings, Analysis and Conclusions

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

17. Petitioner Netzel owes the debt described in paragraphs 3 through 13.

18. **Through September 2011, NO garnishment is authorized.** Thereafter, garnishment is **authorized, up to 15%** of Petitioner Netzel's disposable pay. 31 C.F.R. § 285.11.

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

Order

20. Until the debt is fully paid, Petitioner Netzel 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 **through September 2011.** Thereafter, USDA Rural Development, and those collecting on its behalf, are authorized to proceed with garnishment, up to 15% of Petitioner Netzel's disposable pay.

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 March 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Building Room 1031
1400 Independence Avenue, SW
Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776