

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWG Docket No. 12-0480

In re: Donna Cassella,
Petitioner

Decision and Order

This matter is before me upon the request of Petitioner for a hearing to address the existence or amount of a debt alleged to be due, and if established, the terms of any repayment prior to imposition of an administrative wage garnishment. On June 25, 2012, I issued a Prehearing Order to facilitate a meaningful conference with the parties as to how the case would be resolved, to direct the exchange of information and documentation concerning the existence of the debt, and setting the matter for a telephonic hearing.

The Rural Development Agency (RD), Respondent, complied with the Discovery Order and a Narrative was filed, together with supporting documentation RX-1 through RX-6 on July 18, 2012. Petitioner submitted exhibits on June 23, 2012, July 31, 2012, and August 15, 2012. On August 9, 2012, at the time set for the hearing, both parties were available. Ms. Giovanna Leopardi represented RD. Ms. Cassella was represented by Frank W. Jones, Esq. The parties were sworn.

Petitioner has been employed for more than one year. Petitioner contends that RD's Counter-Offer to settle the debt was accepted by Petitioner or/about December 21, 2004. RD failed to process the documentation to complete the transaction and provide instructions for forwarding of the agreed settlement funds. Treasury thereafter continued to collect tax refunds via the TOPS (Tax Offset) program.

On the basis of the entire record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. On/about August 20, 1985, Petitioner and her former husband, Joseph Casella, obtained a loan from USDA (formerly FmHA) in the amount of \$41,700 United States Department of Agriculture (USDA), now Rural Development (RD). RX-1.
2. The debt went into default.
3. The home was sold in a “short sale” on/about November 2, 1998. RX-3.
4. Petitioner became divorced from her former husband, Joseph Casella, but had a property settlement agreement between the marital parties.
5. Both Petitioner and her former husband remained jointly and severally liable on the remaining debt to RD.
6. Joseph Casella is now deceased.
7. Petitioner and RD exchanged written offers and counter-offers regarding the terms of settlement of the remaining debt.
8. RD’s May 6, 2003 counter-offer of a full and final settlement of \$6,000 (RX-4 @ p.29 of 32, & 32 of 32) was communicated to Petitioner’s attorney via a phone conversation with RD’s collection agent (DSC, Inc.) on/about March 23, 2004.
9. Despite the Petitioner’s acceptance of RD’s counter-offer, (PX-11) dated December 21, 2004, RD and/or Treasury, and/or its collection agent (DSC, Inc.) continued to utilize tax off-set collection from Petitioner.
10. RD has collected \$1,409 (net) from Petitioner. RX-6 @ p. 1 of 3.

11. Despite RD's close relationship with Treasury and familiarity with the debt collection process, RD still embraces "transfer to Treasury for cross-servicing" as a legalistic excuse for its failure to settle the debt at terms it was willing to accept.
RX-3 @ p. 14 of 20.
12. I find that the parties, being variously, the Treasury of United States of America and/or Rural Development agency of USDA, and/or its collection agent (DSC, Inc.) and the Petitioner reached a settlement on the outstanding debt in the amount of \$6,000.00.
13. I further find that despite the inchoate settlement, Treasury has collected \$1409.00 towards the debt.
14. Petitioner stated during the hearing that she was and has been ready, willing, and able to complete the debt settlement transaction in a lump sum amount.
15. Notwithstanding the counter-offer and acceptance thereof, I have prepared a Financial Hardship Calculation¹ using the Financial Statements signed under oath by Petitioner.
16. The routine Financial Hardship Calculation reveals that even if this debt were not already settled, then RD would not be permitted to garnish her wages under her current financial position.

Conclusions of Law

1. Petitioner is jointly and severally indebted to USDA Rural Development in the amount of \$4,591 (\$6,000.00 - \$1409.00) for the mortgage loan extended to her.

¹ The Financial Hardship calculation is not posted on the OAJ website.

2. The settlement amount of \$4,591.00 is valid only if the funds are forwarded to RD or its designee in a lump sum within 14 days of this order.
3. All procedural requirements for administrative wage offset set forth in 31 C.F.R. §285.11 have been met.
4. The Respondent is not entitled to administratively garnish the wages of the Petitioner.

Order

For the foregoing reasons, I find that Petitioner's debt to RD in the amount of \$4,591.00 may be fully satisfied by a lump sum payment in the same amount within 14 days of this order.

The parties may mutually agree in writing to extend the time for concluding the settlement.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk's Office.

August 22, 2012

James P. Hurt
Hearing Official

Copies to: Giovanna Leopardi
 Donna Casella (via Frank W. Jones, Esq.)
 Dale Theurer

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