

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AWG]
) Docket No. **13-0044**
 Lonnie A. Maxwell)
) **Remand to USDA Rural Development and**
 Petitioner) **Dismissal of Garnishment Proceeding and This Case**

Appearances:

Lonnie A. Maxwell, the Petitioner, who represents himself (appears *pro se*); 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 January 3, 2013. Lonnie A. Maxwell, the Petitioner (“Petitioner Maxwell”), participated, representing himself (appearing *pro se*).

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

Summary of the Facts Presented

3. Petitioner Maxwell’s letter (date stamped October 5, 2012) is admitted into evidence, together with his Hearing Request (dated September 30, 2012).

4. USDA Rural Development’s Exhibits RX 1 through RX 5, plus Narrative, Witness & Exhibit List (filed December 12, 2012), are admitted into evidence, together with the testimony of Giovanna Leopardi.

5. The loan was made by the United States Department of Agriculture, Farmers Home Administration, in 1992, for a home in Texas. RX 1. Petitioner Maxwell and his wife and

co-borrower, Kathryn L. Maxwell, on June 19, 1992, signed the Promissory Note and the Deed of Trust for the home. RX 1.

6. The amount borrowed was \$36,240.00, but the loan became delinquent and in 2001 was reamortized by the co-borrower, Kathryn L. Maxwell, also known as Kathryn L. Burrell. RX 1, pp. 8-11. Petitioner Maxwell did not sign the Reamortization Agreement, but Kathryn L. Burrell did. The Reamortization in 2001 made the principal amount \$57,165.04. Reamortization did not change the total amount owed, which all became principal.

7. Reamortization made the loan current, by adding the delinquent amount to the principal balance, but the loan did not stay current. A Notice of Acceleration dated October 25, 2007 (RX 2), indicated that the balance of the account was \$47,724.63 unpaid principal plus \$6,068.08 unpaid interest as of October 25, 2007.

8. The foreclosure sale was about a year later, on October 7, 2008. *See* RX 3, pp. 15-16). USDA Rural Development was the highest bidder, at \$29,099.80. USDA Rural Development Narrative. The home became “Real Estate Owned” (REO). No interest has accrued since October 2008.

9. Exactly how the proceeds from the home were applied is not clear to me. There were likely unpaid insurance premiums and unpaid real estate taxes that had had to be advanced by USDA Rural Development and needed to be repaid. There would have been foreclosure costs and fees. There was apparently more than \$9,000.00 in unpaid interest.

10. The unpaid principal, also called “Acquisition Balance” (*see* RX 4, p. 10), was \$47,724.63. After an “Administrative Adjustment” of \$16,534.13 was subtracted from the \$47,724.63, the amount USDA Rural Development claimed to be due was \$31,190.50. RX 4, pp. 7 & 10. The detail is lacking, but the figures are reasonable, considering the costs mentioned above in paragraph 9. Late charges of \$289.00 were then added, making the debt \$31,479.50. This is the amount that was sent to the U.S. Treasury for collection, early in 2012.

11. The debt is Petitioner Maxwell’s and his co-borrower’s joint-and-several obligation. Each of them is legally liable to repay USDA Rural Development. So far, all the payments have come from Petitioner Maxwell. None, so far, have come from his co-borrower Kathryn L. Burrell.

12. USDA Rural Development’s position is that Petitioner Maxwell owed to USDA Rural Development **\$30,418.92** as of December 4, 2012 (excluding the potential remaining collection fees). RX 5, p. 2. After careful review of all of the evidence, I agree with USDA Rural Development’s position. Legally, USDA Rural Development (the U.S. Department of

the Treasury collects for USDA Rural Development) could collect the entire debt from Petitioner Maxwell. Petitioner may have recourse against his co-borrower Kathryn L. Burrell, to be reimbursed for amounts he has paid on the debt. Petitioner Maxwell may want to consult with an attorney about that. Petitioner Maxwell may want to consult with an attorney who has bankruptcy expertise.

13. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$30,418.92**, would increase the balance by \$8,517.30, to \$38,936.22. RX 5, p. 2.

14. Petitioner Maxwell's Hearing Request was regarded as a "Late Hearing" request - - the request was supposed to be received by August 1, 2012 to keep garnishment from happening until he had had the opportunity to be heard. Petitioner Maxwell's Hearing Request was not received until about October 5, 2012. Because his Hearing Request was "late", garnishment of Petitioner Maxwell's pay has been ongoing. The garnishments of Petitioner Maxwell's pay have been happening about every two weeks, so the balance of the debt is changing regularly. The reason Petitioner Maxwell's Hearing Request was late, is that the Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to an address that was not his. Petitioner Maxwell was prompt in requesting a hearing when he received notification. The debt balance will **increase** when the amounts already garnished are returned to Petitioner Maxwell. *See* paragraph 23.

15. Petitioner Maxwell testified that he and the co-borrower, his former wife, Kathryn L. Burrell, were divorced in 1993, and that he had not heard anything on the house since then, until the U.S. Treasury started collecting from him! Petitioner Maxwell could not have been expected to keep USDA Rural Development apprised of his current address all the years since 1993; he thought his connection to USDA Rural Development had ended - - it has not.

16. Petitioner Maxwell testified that he knew nothing of the foreclosure, in 2008. Petitioner Maxwell testified that even the Notice of Acceleration did not reach him, in 2007. The Notice of Acceleration (RX 2) was addressed to him at his former wife's address, the home that was about to be foreclosed on, except that the street name was spelled wrong. The correct street name was "Carter," but the Notice of Acceleration erroneously used "Cater".

17. Petitioner Maxwell was not included in any debt settlement opportunity; the debt settlement process was apparently done sometime in 2011 or very early 2012 (close to 3 years after one would expect it to be done). RX 3, p. 45; RX 4, pp. 9-10. Even the Chapter 13 bankruptcy had ended in 2009. [A relief order had been granted (RX 3, pp. 3-4) prior to the Notice of Acceleration, so that the foreclosure could go forward even though the bankruptcy was pending.] Petitioner Maxwell never had an opportunity to negotiate with USDA Rural Development.

Findings, Analysis and Conclusions

18. Petitioner Maxwell should have his “debt settlement” opportunity with USDA Rural Development; that opportunity should and will be restored. I have determined to REMAND this case to USDA Rural Development to begin the “debt settlement” process with Petitioner Maxwell.

Order

19. Until the debt is repaid, Petitioner Maxwell 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).

20. USDA Rural Development will recall the debt **as to Petitioner Maxwell only** from the U.S. Treasury for further servicing by USDA Rural Development. Thus, this case is REMANDED to USDA Rural Development to give Petitioner Maxwell the opportunity to negotiate a repayment plan with USDA Rural Development. USDA Rural Development will begin the process by sending a letter to Petitioner Maxwell.

21. Please notice, Petitioner Maxwell, every detail in the letter you are going to receive from USDA Rural Development, including your obligation to submit a request to the Centralized Servicing Center (part of USDA Rural Development) for a written repayment agreement. You, Petitioner Maxwell, as you complete the forms and provide the requested documentation, will need to determine what to offer: total amount, as well as installments.

22. If NO agreed repayment plan between Petitioner Maxwell and USDA Rural Development happens, or there is a default in meeting repayment plan requirements, and if the debt is consequently submitted to the U.S. Treasury for Cross Servicing, Petitioner Maxwell will be entitled anew to have a hearing.

23. The **garnishments shall stop** as soon as this Remand order can be implemented, and any amounts already garnished from Petitioner Maxwell’s pay prior to implementation **shall be returned** to Petitioner Maxwell, because Petitioner Maxwell did not have timely notice of the upcoming garnishments; the Notice of Intent to Initiate Administrative Wage Garnishment Proceedings was sent to an address that was not his.

24. Repayment of the debt may continue to occur through *offset* of Petitioner Maxwell’s **income tax refunds** or other **Federal monies** payable to the order of Mr. Maxwell.

25. The Garnishment Proceeding and this case are DISMISSED, without prejudice to Petitioner Maxwell to request a hearing timely, should garnishment be noticed.

Copies of this “Remand to USDA Rural Development and Dismissal of Garnishment Proceeding and This Case” shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 8th day of January 2013

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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