

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) [AWG]  
 ) Docket No. **12-0589**  
David Talley )  
 )  
Petitioner ) **Remand to USDA Rural Development and**  
 ) **Dismissal of Garnishment Proceeding and This Case**

Appearances:

David Talley, the Petitioner, who represents himself (appears *pro se*); and

Michelle Tanner, Appeals Coordinator, and Giovanna Leopardi, Appeals Coordinator, United States Department of Agriculture, Rural Development, Centralized Servicing Center, St. Louis, Missouri, who represent the Respondent (USDA Rural Development).

1. The hearing by telephone was held on September 26, 2012 and February 4, 2013. The Petitioner, David Talley, full name David Allen Talley (“Petitioner Talley”), represents himself (appears *pro se*). Participating on his behalf during the hearing were his wife Tonya Talley and his son Devin Talley.

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

Summary of the Facts Presented

3. Petitioner Talley’s Hearing Request dated July 28, 2012 is admitted into evidence, together with the testimony of Petitioner Talley’s wife Tonya Talley and son Devin Talley.

4. USDA Rural Development’s Exhibits RX 1 through RX 11, plus Narrative, Witness & Exhibit List, were filed on August 24, 2012, and are admitted into evidence, together with the testimony of Giovanna Leopardi.

5. Petitioner Talley bought a home in South Carolina in 2008, borrowing \$132,600.00 to pay for it. The loan was made by Homeowners Mortgage Enterprises, Inc., which then sold the loan the same month to JP Morgan Chase Bank, N.A. (RX 2, p. 3). JP Morgan Chase Bank, N.A. is the parent company of Chase Home Finance LLC, the servicing lender. I refer to these entities as Chase, or the lender.
6. Petitioner Talley owes to USDA Rural Development **\$62,859.24** (as of February 4, 2013), in repayment of the United States Department of Agriculture / Rural Development / Rural Housing Service **Guarantee** (see RX 1, esp. p. 2) for the loan made in 2008 (“the debt”). See USDA Rural Development’s Exhibits RX 1 through RX 11, plus Narrative, Witness & Exhibit List, plus the testimony of Giovanna Leopardi.
7. Petitioner Talley’s wife and son testified that Chase did not treat Petitioner Talley fairly; that Chase refused to work with Petitioner Talley; that Chase denied a short sale; and that Chase foreclosed illegally. They indicated that Petitioner Talley has been found eligible to be paid in the litigation against Chase.
8. The **Guarantee** (RX 1) establishes an **independent** obligation of Petitioner Talley, “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.
9. Pursuant to the **Guarantee**, on June 10, 2011, USDA Rural Development paid a loss claim of \$64,315.24 to the lender (Chase). RX 7, p. 11. The Due Date of the last payment made was November 1, 2008. RX 7, p. 4. The foreclosure sale date was March 1, 2010. RX 7, p. 5. RX 8 details the loss claim paid under the **Guarantee**, showing how the loss claim of \$64,315.24 was calculated.
10. At the foreclosure sale on March 1, 2010, the lender (through a subsidiary) was the highest bidder (\$115,937.00). RX 7, p. 5. Chase then sold the REO (real estate owned) on November 18, 2010 (closing date), for \$95,900.00. RX 7, p. 6. Interest stopped accruing on November 18, 2010.
11. USDA Rural Development reimbursed the lender on June 10, 2011 \$64,315.24 (RX 7, p. 11), which is the amount USDA Rural Development seeks to recover from Petitioner Talley under the **Guarantee**. RX 8.

\$131,835.21	Unpaid Principal Balance
\$ 15,091.29	Unpaid Interest Balance [11/01/2008 to 11/18/2010]
\$ 3,001.39	Protective Advances to Pay Taxes and Insurance
\$ <u>59.95</u>	Interest on Protective Advances
\$149,987.84	
+ \$ <u>14,598.15</u>	Lender Expenses to Sell Property
\$164,585.99	Total Debt Charged to Petitioner Talley
=====	
- \$ <u>95,900.00</u>	Funds Received from Sale of the REO (closing November 18, 2010)
\$ 68,685.99	Amount Due Before \$4,370.75 Recoveries/Credits/Reductions
=====	
- \$ <u>4,370.75</u>	Recoveries/Credits/Reductions
\$ 64,315.24	
=====	

RX 8.

12. A collection from Treasury (interception of a \$1,473.00 income tax refund, which was applied to reduce the debt after the \$17.00 collection fee was subtracted), resulted in the balance of **\$62,859.24** as of February 4, 2013 (which does not include the potential remaining collection fees).

13. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$62,859.24**, would increase the balance by \$17,600.59, to \$80,459.83 (as of February 4, 2013).

14. Petitioner Talley's wife testified that the letter dated September 10, 2011 that USDA Rural Development sent to Petitioner Talley (RX 10) went to an address that had, at one time, had their mobile home on it. They had been moved out and the mobile home moved off before that letter was sent. Consequently, Petitioner Talley has not yet been included in any debt settlement opportunity.

15. Petitioner Talley never had an opportunity to negotiate with USDA Rural Development.

### Findings, Analysis and Conclusions

16. The Secretary of Agriculture has jurisdiction over the parties, Petitioner Talley and USDA Rural Development; and over the subject matter, which is administrative wage garnishment.
17. Petitioner Talley owes the debt described in paragraphs 5 through 13.
18. **No refund** to Petitioner Talley of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.
19. Repayment of the debt may occur through *offset* of Petitioner Talley's **income tax refunds** or other **Federal monies** payable to the order of Petitioner Talley.
20. Petitioner Talley 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 Talley.

### Order

21. Until the debt is repaid, Petitioner Talley 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).
22. USDA Rural Development will recall the debt from the U.S. Treasury for further servicing by USDA Rural Development. Thus, this case is REMANDED to USDA Rural Development to give Petitioner Talley the opportunity to negotiate a repayment plan with USDA Rural Development. USDA Rural Development will begin the process by sending a letter to Petitioner Talley.
23. Please notice, Petitioner Talley, 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 Talley, as you complete the forms and provide the requested documentation, will need to determine what to offer: total amount, as well as installments.
24. If NO agreed repayment plan between Petitioner Talley 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 Talley will be entitled anew to have a hearing.

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

26. The Garnishment Proceeding and this case are DISMISSED, without prejudice to Petitioner Talley 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 4<sup>th</sup> day of February 2013

s/ Jill S. Clifton

Jill S. Clifton  
Administrative Law Judge

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