

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)
) **AWG Docket No. 11-0208**
Lawrence E. McCuen)
)
Petitioner) **Decision and Order**

1. The hearing by telephone was held as scheduled on June 23, 2011. Mr. Lawrence E. McCuen, the Petitioner (“Petitioner McCuen”), participated, representing himself (appeared *pro se*).
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. 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

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Summary of the Facts Presented

3. Petitioner McCuen owes to USDA Rural Development a balance of **\$74,160.43** (as of June 8, 2011) in repayment of a United States Department of Agriculture / Rural Housing Service **Guarantee** (see RX 3, esp. p. 2) for a loan made on March 14, 2008 by New West Lending, Inc., for a home in Arizona, the balance of which is now unsecured (“the debt”).¹ See USDA Rural Development Exhibits, plus Narrative, Witness & Exhibit List (filed June 9, 2011), which are admitted into evidence, together with the testimony of Mary Kimball.

¹ Rural Housing Service is a part of USDA Rural Development.

4. This *Guarantee* establishes an **independent** obligation of Petitioner McCuen, “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 3, 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 **\$74,160.43** would increase the current balance by \$20,764.92, to \$94,925.35. See USDA Rural Development Exhibits, esp. RX 10.

6. The amount Petitioner McCuen borrowed from New West Lending, Inc. was \$146,273.00 on March 14, 2008. RX 1. Foreclosure was initiated in 2008. RX 5, p. 3. The liquidation value of the home was estimated at \$81,000.00 on October 22, 2009. RX 5, p. 4. RX 6 contains a summary of the amounts owed to JP Morgan Chase Bank, including principal and interest and costs of sale (\$170,045.61), less credits for the liquidation value and other credits and refunds (\$86,944.90). USDA Rural Development paid JP Morgan Chase Bank \$83,100.71 on January 6, 2010. RX 5, p. 7. Thus \$83,100.71, the amount USDA Rural Development paid, is the amount USDA Rural Development recovers from Petitioner McCuen under the *Guarantee*. Payments made to USDA Rural Development through *offset* (of Petitioner McCuen’s social security disability payments, and of an income tax refund; see RX 9 plus Narrative for detail) have reduced the balance to **\$74,160.43**.

7. Petitioner McCuen’s Exhibits were filed on June 14, June 20, and June 21, 2011. Petitioner McCuen’s Exhibits are admitted into evidence, together with his testimony, together with his Hearing Request dated March 31, 2011, and his accompanying letter dated March 31, 2011. Petitioner McCuen maintains that he and his wife should not have qualified for the loan, and that the loan should therefore never have been made. Petitioner’s recourse, if any, is against the lender. I find nothing questionable with respect to the *Guarantee* and USDA Rural Development’s payment to JP Morgan Chase Bank.

8. Petitioner McCuen pays reasonable and necessary living expenses for not only himself but also toward the expenses of his wife and two children, from whom he is separated. His [REDACTED] per month social security disability payments (excluding the spouse and child benefits, which go directly to his wife), do not meet his reasonable and necessary living expenses. Petitioner McCuen has no other income. Further, he owes a substantial school loan debt (\$19,000.00) in addition to this USDA Rural Development debt. NO garnishment is authorized, because any garnishment would create financial hardship. 31 C.F.R. § 285.11.

9. Petitioner McCuen may want to negotiate the disposition of the debt with Treasury's collection agency.

Discussion

10. NO garnishment is authorized. *See* paragraph 8. I encourage **Petitioner McCuen and the collection agency to negotiate promptly** the repayment of the debt. Petitioner McCuen, this will require **you** to telephone the collection agency after you receive this Decision. Petitioner McCuen, you may request that you be permitted to compromise the debt for an amount you are able to pay, to settle the claim for less. You may ask that a smaller amount of your social security disability payment be *offset*. The toll-free number for you to call is **1-888-826-3127**.

Findings, Analysis and Conclusions

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

12. Petitioner McCuen owes the debt described in paragraphs 3, 4, 5 and 6.

13. **NO garnishment is authorized.** Petitioner McCuen cannot withstand garnishment in any amount without creating financial hardship. 31 C.F.R. § 285.11. Petitioner McCuen has no earnings. His sole income is social security disability payments.

14. This Decision does not prevent repayment of the debt through *offset* of Petitioner McCuen's **income tax refunds** or other **Federal monies** payable to the order of Mr. McCuen.

Order

15. Until the debt is repaid, Petitioner McCuen 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).

16. USDA Rural Development, and those collecting on its behalf, are **NOT** authorized to proceed with garnishment. 31 C.F.R. § 285.11.

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 June 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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