

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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|--------------|---|---------------------------|
| In re: |) | |
| |) | [AWG] |
| Lekenzi Ross |) | Docket No. 12-0432 |
| |) | |
| Petitioner |) | Decision and Order |

Appearances:

Lekenzi Ross, the Petitioner, representing himself (appearing *pro se*); and

Michelle Tanner, 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 August 7 and August 24, 2012. Lekenzi Ross, the Petitioner (“Petitioner Ross”) participated, representing himself (appearing *pro se*).
2. Rural Development, an agency of the United States Department of Agriculture (USDA), the Respondent (“USDA Rural Development”), participated, represented by Michelle Tanner.

Summary of the Facts Presented

3. USDA Rural Development’s Exhibits RX 1 through RX 5, plus Narrative, Witness & Exhibit List, filed on June 22, 2012, are admitted into evidence, together with the testimony of Michelle Tanner. Also admitted into evidence are RX 6 through RX 8, filed on August 13, 2012; and RX 9 through RX 11, filed on August 27, 2012.
4. Petitioner Ross’s Hearing Request dated in March 2012 is admitted into evidence, together with the testimony of Petitioner Ross. The record was held open through September 14, 2012 for Petitioner Ross to file a “Consumer Debtor Financial Statement” (or some other income / expense format), and documentation of his income (such as pay stubs), but Petitioner Ross did not submit any such evidence.

5. As of August 24, 2012, Petitioner Ross owed to USDA Rural Development a balance of **\$14,055.64** in repayment of the United States Department of Agriculture / Farmers Home Administration loan made to his mother in 1990, for a home in Georgia. The loan balance (“the debt”) is now unsecured. Garnishment has been ongoing for more than 2-1/2 years, so the balance Petitioner Ross owes to USDA Rural Development is repeatedly being reduced. Petitioner Ross assumed the loan balance on June 28, 2000, after his mother’s death in 1999. *See* USDA Rural Development Exhibits RX 1 through RX 11, plus Narrative, Witness & Exhibit List, and the testimony of Petitioner Ross.

6. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$14,055.64** would increase the current balance by \$3,935.58, to \$17,991.22. *See* RX 11.

7. The loan had been reamortized in December 1998, meaning that unpaid past due amounts were added to principal so that the loan could be made current. The reamortized principal balance in December 1998 was \$59,958.15. RX 8, p. 3. When Petitioner Ross assumed the loan, on June 28, 2000, the balance was \$59,508.88. After the last house payment made, the next payment due date was October 11, 2000. RX 2, p. 4. The house payments were no longer made. Petitioner Ross was at college out-of-state. The subsidy payments stopped when the borrower (Petitioner Ross) no longer occupied the home. *See* RX 6, p. 7. Petitioner Ross’s brother still lived in the home. Testimony of Petitioner Ross. A Notice of Acceleration and Intent to Foreclose sent to Petitioner Ross on April 12, 2002 (RX 2, pp. 1-3), showed \$58,735.15 unpaid principal and \$8,370.94 unpaid interest.

8. Petitioner Ross stated in his Hearing Request: “I do not owe the debt.” “House was sold (short sell) For more than owed (\$46,313.00) in “02”. I owed approx 34,000.00.” The sale was on September 3, 2002. The proceeds from sale of the home, available to apply on the loan, were \$46,313.00. RX 4. I find that Petitioner Ross is correct about the amount from the sale, but Petitioner Ross is not correct about the amount he owed: the amount was not approximately \$34,000.00; the amount owed was \$75,684.22.

9. The amount Petitioner Ross’s mother borrowed in 1990 was \$54,500.00. RX 1. By the time the home was sold on September 3, 2002, the debt had grown to \$75,684.22:

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|------------------|--|
| \$ 58,735.15 | Principal Balance prior to sale |
| \$ 10,456.44 | Interest Balance prior to sale |
| \$ 6,101.60 | Recoverable costs (such as unpaid taxes, insurance, foreclosure costs) |
| <u>\$ 391.03</u> | Interest on recoverable costs |
| | |
| \$ 75,684.22 | Total Amount Due |
| ===== | |

RX 4, p. 1, RX 9, RX 10, and the testimony of Michelle Tanner.

10. Interest stopped accruing when sale proceeds were applied on the loan, in 2002. Proceeds from sale of the home reduced the Total Amount Due by \$46,313.00. Collections from Treasury applied to the debt (after collection fees are subtracted) have reduced the debt to **\$14,055.64** unpaid as of August 24, 2012 (excluding the potential remaining collection fees). See RX 4, RX 10 and RX 11, and the testimony of Michelle Tanner.

11. My Hearing Notice and Prehearing Deadlines, dated June 1, 2012, invited financial disclosure from Petitioner Ross, such as filing a Consumer Debtor Financial Statement. Petitioner Ross filed nothing. During both segments of the Hearing I encouraged Petitioner Ross to provide financial information. My notice that Hearing Will Resume filed August 7, 2012 requested Petitioner Ross to provide financial information. Petitioner Ross did not file a Consumer Debtor Financial Statement or pay stubs or any other documentation of his financial situation, so I cannot calculate Petitioner Ross's current disposable pay. (Disposable pay is gross pay minus income tax, Social Security, Medicare, and health insurance withholding; and in certain situations minus other employee benefits contributions that are required to be withheld.) There is no evidence before me to use to consider the factors to be considered under 31 C.F.R. § 285.11. In other words, I cannot tell whether garnishment to repay "the debt" (see paragraph 5) in the amount of 15% of Petitioner Ross's disposable pay creates a financial hardship.

12. Petitioner Ross is responsible and able to negotiate the repayment of the debt with Treasury's collection agency.

Discussion

13. Garnishment of Petitioner Ross's disposable pay is authorized. I encourage **Petitioner Ross and Treasury's collection agency to negotiate promptly** the repayment of the debt. Petitioner Ross, this will require **you** to telephone Treasury's collection agency after you receive this Decision. The toll-free number for you to call is **1-888-826-3127**. Petitioner Ross, you may choose to offer to the collection agency to compromise the debt for an amount you are able to pay, to settle the claim for less. Petitioner Ross, you may want to have someone else with you on the line if you call.

Findings, Analysis and Conclusions

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

15. Petitioner Ross owes the debt described in paragraphs 5 through 10.

16. **Garnishment up to 15% of Petitioner Ross's disposable pay** is authorized. There is no evidence that financial hardship will be created by the garnishment. 31 C.F.R. § 285.11.

17. **No refund** to Petitioner Ross of monies already collected or collected prior to implementation of this Decision is appropriate, and no refund is authorized.

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

Order

19. Until the debt is repaid, Petitioner Ross 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, and those collecting on its behalf, are authorized to proceed with **garnishment up to 15% of Petitioner Ross's disposable pay**. 31 C.F.R. § 285.11.

21. I am **not** ordering any amounts already collected prior to implementation of this Decision, whether through *offset* or garnishment of Petitioner Ross's pay, to be returned to Petitioner Ross.

Copies of this Decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 24th day of September 2012

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

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