

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: )  
 ) [AWG]  
Jed LeClaire ) Docket No. **12-0438**  
 )  
Petitioner ) **Decision and Order**

Appearances:

Jed LeClaire, the Petitioner, representing himself (appearing *pro se*).

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, 2012. The Petitioner, Jed LeClaire, also known as Jed M. LeClaire (“Petitioner LeClaire”), 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. Petitioner LeClaire’s Hearing Request dated February 28, 2012 (filed May 14, 2012) is admitted into evidence, together with the testimony of Petitioner LeClaire. The record was held open through August 30, 2012 for Petitioner LeClaire to file a “Consumer Debtor Financial Statement” (or some other income / expense format), and documentation of his income (such as pay stubs), but Petitioner LeClaire did not submit any such evidence.
4. USDA Rural Development’s Exhibits RX 1 through RX 10, plus Narrative, Witness & Exhibit List, were filed on June 22, 2012, and are admitted into evidence, together with the testimony of Michelle Tanner.

5. Petitioner LeClaire borrowed to buy a home in Minnesota. Petitioner LeClaire bought the home in Minnesota in 2005 and borrowed \$79,000.00 to pay for it. RX 2.
6. USDA Rural Development's position is that Petitioner LeClaire owes to USDA Rural Development **\$54,759.51** (as of about August 7, 2012), 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 2005 ("the debt"). The loan was made by JP Morgan Chase Bank, N.A. and serviced by Chase Home Finance LLC; the *Guarantee* remained in force. See USDA Rural Development Exhibits RX 1 through RX 10, plus Narrative, Witness & Exhibit List, and the testimony of Michelle Tanner.
7. After careful review of all of the evidence, I agree with USDA Rural Development's position. [The loan balance will likely have been reduced from the August 7, 2012 balance of **\$54,759.51** (excluding collection costs), because garnishment is ongoing, including garnishments of Candice Rohde the co-borrower's pay.]
8. Potential Treasury fees in the amount of 28% (the collection agency keeps 25% of what it collects; Treasury keeps another 3%) on **\$54,759.51** would increase the current balance by \$15,332.66, to \$70,092.17. See RX 10, p. 2, and the testimony of Michelle Tanner.
9. The *Guarantee* (RX 1) establishes an **independent** obligation of Petitioner LeClaire, "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.
10. The Due Date of the last payment made was December 1, 2009. RX 6, p. 5. The foreclosure was initiated on May 7, 2010. RX 6, p. 5. The foreclosure sale was held on June 29, 2010. The lender Chase (Chase Home Finance LLC) acquired the home, which became REO (Real Estate Owned), at the foreclosure sale for the highest bid of \$29,750.00. RX 3. The home was listed for sale "as is" for \$29,900.00 and sold on April 18, 2011 for \$25,900.00. RX 5.
11. The amount Petitioner LeClaire borrowed in 2005 was \$79,000.00. RX 2. By the time the home was sold on April 18, 2011, the debt had grown to \$90,743.49:

\$ 71,933.99	Principal Balance prior to sale
\$ 6,071.77	Interest Balance prior to sale
\$ 1,438.31	Protective Advances to Pay Taxes and Insurance
<u>\$ 25.98</u>	Interest on Protective Advances
\$ 79,470.05	
=====	
+ \$ 11,273.44	Lender Expenses to Sell the Property
_____	
\$ 90,743.49	Amount Due
=====	

RX 7 and USDA Rural Development Narrative and the testimony of Michelle Tanner.

12. Interest stopped accruing in 2011. Proceeds from sale of the home reduced the Amount Due by \$25,900.00. Recoveries/Credits/Reductions reduced the Amount Due by \$9,811.97. This left \$55,031.52 remaining due. RX 7. USDA Rural Development reimbursed the lender \$55,031.52 on July 20, 2011, which is the amount USDA Rural Development seeks to recover from Petitioner LeClaire under the *Guarantee*. RX 7.

13. Collections from Treasury applied to the debt after collection fees are subtracted have reduced the debt to **\$54,759.51** as of about August 7, 2012 (excluding the potential remaining collection fees).

14. My Hearing Notice and Prehearing Deadlines filed June 22, 2012 invited financial disclosure from Petitioner LeClaire, such as filing a Consumer Debtor Financial Statement. Petitioner LeClaire filed nothing. During the Hearing I encouraged Petitioner LeClaire to provide financial information. My notice of Record Held Open filed August 8, 2012 requested Petitioner LeClaire to provide financial information. Petitioner LeClaire did not file a Consumer Debtor Financial Statement or pay stubs or any other documentation of his financial situation, so I cannot calculate Petitioner LeClaire'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.)

15. Petitioner LeClaire testified that there are 4 in his household and he is the only one working. He testified that he has about \$20,000.00 to \$30,000.00 in medical debt. Without financial documentation, there is insufficient evidence before me to consider the factors

under 31 C.F.R. § 285.11. In other words, there is not enough proof that garnishment to repay “the debt” (*see* paragraph 6) in the amount of 15% of Petitioner LeClaire’s disposable pay will create a financial hardship.

16. Petitioner LeClaire is responsible and able to negotiate the repayment of the debt with Treasury’s collection agency.

#### Discussion

17. Garnishment of Petitioner LeClaire’s disposable pay is authorized. I encourage Petitioner LeClaire and Treasury’s collection agency to **negotiate** the repayment of the debt. Petitioner LeClaire, 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 LeClaire, you may want to request apportionment of debt between you and the co-borrower. Petitioner LeClaire, 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 LeClaire, you may want to have someone else with you on the line if you call.

#### Findings, Analysis and Conclusions

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

19. Petitioner LeClaire owes the debt described in paragraphs 5 through 13.

20. **Garnishment up to 15% of Petitioner LeClaire’s disposable pay** is authorized. There is insufficient evidence that financial hardship will be created by the garnishment. 31 C.F.R. § 285.11.

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

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

#### Order

23. Until the debt is repaid, Petitioner LeClaire 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).

24. USDA Rural Development, and those collecting on its behalf, are authorized to proceed with **garnishment up to 15% of Petitioner LeClaire's disposable pay**. 31 C.F.R. § 285.11.

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

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

Done at Washington, D.C.  
this 26<sup>th</sup> day of September 2012

s/ Jill S. Clifton

Jill S. Clifton  
Administrative Law Judge

Michelle Tanner, Appeals Coordinator  
USDA / RD Centralized Servicing Center  
Bldg 105 E, FC-244  
4300 Goodfellow Blvd  
St Louis MO 63120-1703  
[michelle.tanner@stl.usda.gov](mailto:michelle.tanner@stl.usda.gov)

314-457-5775 phone  
314-457-4547 FAX

Hearing Clerk's Office  
U.S. Department of Agriculture  
South Building Room 1031  
1400 Independence Avenue, SW  
Washington DC 20250-9203  
202-720-4443  
Fax: 202-720-9776