
In the Matter of:

Beckie Thompson,

Petitioner

HUDBCA No. 04-D-CH-EE015
Claim No. 7-805749570B

Pro se

Beckie Thompson
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For the Secretary

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DECISION AND ORDER

Petitioner was notified by Due Process Notice that, pursuant to 31 U.S.C. § 3720A, the Secretary of the U.S. Department of Housing and Urban Development (“HUD”) intended to seek administrative offset of any Federal payments due to Petitioner in satisfaction of a delinquent and legally enforceable debt allegedly owed to HUD. The claimed debt has resulted from a defaulted loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act. (12 U.S.C. § 1703).

Petitioner has made a timely request for a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD. The administrative judges of this Board have been designated to conduct a hearing to determine whether the debt allegedly owed to HUD is legally enforceable. (24 C.F.R. § 17.152(c)). As a result of Petitioner’s request, referral of the debt to the U.S. Department of Treasury for offset was temporarily stayed by the Board until issuance of this written decision.

Summary Of Facts And Discussion

On October 3, 1991, Petitioner and Matt Halstengard (“Halstengard”) executed and delivered to the lender, Conseco Finance Servicing Corporation (“Conseco”), a

Manufactured Home Retail Installment Contract and Security Agreement (“Contract”) in the principal amount of \$30,206.75 for a manufactured home loan that was insured against non-payment by the Secretary pursuant to the National Housing Act, 12 U.S.C. § 1703. (Secretary’s Statement, hereinafter “Secy. Stat.,” ¶ 2). Section 16 of the Contract provides that:

NOTICE: Except for any notice required under applicable law to be given in another manner, (a) any notice to me provided for in this Contract shall be given in writing by mailing such notice by certified mail, addressed to me at the Manufactured Home address or at such other address as I may designate by notice to you in writing, and (b) any notice to you shall be given in writing by certified mail, return receipt to your address stated herein or to such other address as you may designate by notice to me in writing.

(Secy. Stat., unmarked Exh.). Petitioner and Halstengard failed to make payments as agreed in the Contract. (Secy. Stat., ¶ 3). Conseco assigned the Contract to the United States of America in accordance with 24 C.F.R. § 201.54 (2003). *Id.* The Secretary is the holder of the Contract on behalf of the United States. *Id.* Petitioner is currently in default on the Contract. *Id.* The appraised value of the manufactured home before repairs was \$14,030.00. (Supplemental Declaration of Brian Dillon, hereinafter “Supp. Dillon Decl.,” dated February 8, 2005, ¶ 6). The Title I Lender’s Claim for Loss reflects that the best price obtainable for the manufactured home was \$14,030.00. *Id.* The Secretary claims that Petitioner is indebted to the Government in the following amounts: \$7,908.86 as the unpaid principal balance as of February 29, 2004; \$608.67 as the unpaid interest on the principal balance at 2% per annum through February 29, 2004; and interest on said principal balance from March 1, 2004 at 2% per annum until paid. (Secy. Stat., Exh. A, Declaration of Brian Dillon, hereinafter “Dillon Decl.,” ¶ 4).

The Secretary has filed a Statement with documentary evidence in support of his position that the Petitioner is indebted to the Department in a specific amount. Petitioner does not dispute the existence or amount of the debt incurred, or that the debt is delinquent. Rather, Petitioner contests the enforceability of the alleged debt. (Petitioner’s Letter, hereinafter “Pet. Ltr.,” dated February 9, 2004).

I.

First, Petitioner contends that the debt is not legally enforceable “due to the fact that . . . [she] was never notified by the credit granter [sic] about the debt being delinquent.” *Id.* Petitioner admits that she occupied the manufactured home with Halstengard until shortly before his death. (Petitioner’s Declaration, hereinafter “Pet. Decl.,” ¶ 2). Petitioner states that in May 2003 she was “notified that Halstengard had

passed away” and was told that the manufactured home had been repossessed in April 2003 and later sold on May 23, 2003, but she never received any prior written notice. (Pet. Ltr., dated February 9, 2004). The evidence in the record does not reveal the exact date in May 2003 on which Petitioner first learned of the repossession and sale.

The Secretary has presented evidence that a Notice of Default dated March 21, 2003 was sent to Petitioner by certified mail at 20118 135th Ave E 47, Graham, WA 98338, and returned to Conseco by the Postal Service with the return receipt marked “Undeliverable as Addressed-No Forwarding Order on File.” (Dillon Decl., ¶ 6; Dillon Decl., Exh. A). The Secretary has also submitted a copy of the Notice of Sale dated April 29, 2003, which was sent to Petitioner by Conseco. (Dillon Decl., Exh. B). This Notice was sent to Petitioner by certified mail at 10901 36th Ave Ct. E, Parkland, WA 98446, an address Conseco obtained through a regional department as a reasonable address for Petitioner. (Dillon Decl., Exh. B; Supp. Dillon Decl., dated February 8, 2005, ¶ 3). The Notice of Sale stated, *inter alia*, that Conseco had “obtained possession of the . . . property, either by voluntary surrender or repossession [and that the] property . . . will be sold at a private sale sometime after 10 days from the Date of Notice (shown above) unless redeemed by you prior to such sale.” (Dillon Decl., Exh. B). A Notice of Sale was not sent to the manufactured home address at 20118 135th Ave E 47, Graham, WA 98338 because Conseco reasonably believed that Petitioner was no longer living in the manufactured home. (Dillon Decl., ¶ 6).

Under Washington law, a lender is required to issue reasonable notification of sale to the debtor. West’s RCWA 62A.9A-610(a); Empire South, Inc. v. Repp, 51 Wash.App. 868, 756 P.2d 745, review denied, 111 Wash.2d 1027 (1988). The lender has the burden of proving commercial reasonableness, Rotta v. Early Industrial Corp., 47 Wash.App. 21, 24-25, 733 P.2d 576 (1987), and reasonableness is a question of fact for the trier of fact. Service Chevrolet, Inc. v. Sparks, 99 Wash.2d 199, 204-05, 660 P.2d 760 (1983). A lender can satisfy the notice requirement merely by sending notification; it is not necessary that the debtor receive it. McChord Credit Union v. Clyde Parrish, 61 Wash.App. 8, 809 P.2d 759 (1991); Swanson v. May, 40 Wash.App. 148, 697 P.2d 1013, (1985). If the address of the debtor is unknown, a lender may send a Notice of Sale to any address reasonable under the circumstances. McChord Credit Union v. Clyde Parrish, 61 Wash.App. at 10, 809 P.2d 759 (1991) quoting RCW 62A1-201(38).

Failure to comply with the notice requirements raises a presumption that the collateral is at least equal to the amount of the outstanding debt. Empire South, Inc. v. Repp, 51 Wash.App. 868, 756 P.2d 745, review denied 111 Wash.2d 1027 (1988); Rotta v. Early Industrial Corp., 47 Wash.App. at 26-27, 733 P.2d 576 (1987). To overcome this presumption, the creditor must either obtain fair and reasonable appraisal at or near time of repossession or produce convincing evidence of the value of the collateral. Empire South, Inc. v. Repp, 51 Wash.App. at 879, 756 P.2d 745, quoting United States v. Cawley, 464 F.Supp. 189, 192 (E.D. Wash.1979).

The Notice of Sale sent to 10901 36th Ave Ct. E, Parkland, WA 98446 was returned to Conseco by the Postal Service with the return receipt marked, apparently,

“Address Unknown” and the handwritten notation “Vacant Unknown”. (Dillon Decl., Exhs. C and D). There is no evidence that Conseco received the returned Notice of Sale back from the Postal Service before the property was sold. *Id.* The record also documents an attempt in March 2003 to locate Petitioner by Conseco. The Secretary has submitted the Lender’s Collections Comments Report (“lender’s notes”) which indicated that Conseco contacted Halstengard by telephone on March 26, 2003 before sending the Notice of Sale to Petitioner. The lender’s notes record that during the March 26, 2003 conversation Conseco attempted to obtain Petitioner’s current address from Halstengard, but was unsuccessful. (Dillon Decl., Exh. F). The lender’s notes further record that Halstengard “has no idea where Becki is . . . [he has not] had contact with her in over 3 year[s].” *Id.* There is no indication in the lender’s notes that Petitioner provided Conseco with a more current address. There is insufficient evidence for me to find that Conseco knew or should have known that Petitioner did not receive the Notice of Sale before the sale of the home in May 2003.

The Secretary asserts that the address used for the Notice of Sale is a reasonable address as documented by a current Social Search report from Experian Credit Bureau. (Supp. Dillon Decl., dated October 13, 2004, ¶ 4). However, the Social Search report from Experian Credit Bureau identifies Petitioner’s address as 10901 36th Ave. Ct. E, Tacoma, WA. *Id.* Petitioner admits that she lived at 10901 36th Ave. Ct. E, Tacoma, WA 98446 after leaving the address for the manufactured home at 20118 135th Ave E 47, Graham, WA. (Petitioner’s Affidavit, hereinafter “Pet. Aff.,” ¶ 1). The Secretary contends that there is no legal significance between sending the Notice of Sale to Petitioner at 10901 36th Ave. Ct. E, Parkland, WA instead of to Petitioner at 10901 36th Ave. Ct. E, Tacoma, WA. The Secretary has submitted documentary evidence that the cities of Parkland and Tacoma share the same zip code (98446) and can be used interchangeably for purposes of mailing. (Supp. Dillon Decl., dated February 8, 2005, ¶¶ 3-4; Supp. Dillon Decl., dated February 8, 2005, Exh. H). Petitioner has offered no documentary evidence to the contrary. There is insufficient evidence for me to find that the 10901 36th Ave. Ct. E, Parkland, WA 98446 address was an unreasonable address to use for the purpose of legal notification.

Petitioner avers that her address has been “13317 Baniff Lane, Surprise, AZ 85379” since 2001 and that Conseco had notice of her new address. (Pet. Aff., ¶ 3). However, this was not the address used by Petitioner when she entered into the Contract on October 3, 1991, and Petitioner has offered no evidence showing why this address should have been used for the April 2003 Notice of Sale. Petitioner has submitted a photocopy of a handwritten note which purports to document Petitioner’s telephone conversations with Conseco in June 2001 and July 2003. (Pet. Decl., unmarked Exh.). Petitioner has also submitted photocopies of certified mail receipts addressed to “Consecofn” at “345 St [sic] Peter/900 Landmk Saint Paul MN 55102” and to “Customer Relations” at “4000 Horizon Way Irving, Texas 75063” as well as a photocopy of what appears to be the Sender address section of an unidentified mailing form with the following information filled in: “Beckie Gerberry 16351 N. Oaks Dr. Surprise AZ 85374.” (Pet. Decl., unmarked Exhs.). These documents do not conclusively establish Petitioner’s address in April 2003, nor do they prove that Conseco had notice of

Petitioner's address in Arizona. The handwritten note is deficient in its probative value because it has no legible date of its preparation by Petitioner. In the absence of further corroborating documentary evidence, that handwritten note is insufficient proof that Petitioner advised Conseco of her change of address in 2001 or 2003. Likewise, the photocopies of the mailing receipts do not constitute proof that Petitioner advised Conseco of her new Arizona address at the times relevant to this case. Although the receipts are addressed to Conseco, without further corroborating documentary evidence, these exhibits are deficient since there is no way of knowing what was actually mailed to Conseco. Petitioner herself has admitted that she "[does] not have a copy of the letter dated June 5, 2001, that went with it." (Pet. Decl., ¶ 5).

The Social Search Report from Experian Credit Bureau and Petitioner's listing of addresses, which were submitted to establish Petitioner's contention that she resided in Arizona in April 2003, list ten (10) addresses in two states during the period October 3, 1991 through April 2003. Petitioner has offered no persuasive documentary evidence that she advised Conseco of her addresses after leaving 20118 135th Ave E 47, Graham, WA 98338, the address of the manufactured home. Without the aid of Petitioner, it was unlikely that Conseco could send any notice to Petitioner with a certainty of its receipt.

Under the circumstances of this case, I find that Conseco made a good faith effort to give notice to Petitioner and that the Notice of Sale sent to Petitioner was reasonable under Washington law. Conseco did not have any legal obligation to search for Petitioner after mailing the Notice of Sale, since there is no evidence that Conseco knew or should have known that Petitioner did not receive the notice before the sale of the manufactured home in May 2003. Even if it were determined that the Notice of Sale sent by Conseco was inadequate in some way, the subject debt would still be enforceable under Washington law, since failure to provide reasonable Notice of Sale is remedied by evidence that the creditor sold the manufactured home for its full market value, and an independent appraisal suffices to establish that value. Grant Tractor Co. v. Nuss, 6 Wash.App. 866, 869-70, 496 P.2d 966 (1972); Service Chevrolet, Inc. v. Sparks, 99 Wash.2d 199, 204-05, 660 P.2d 760 (1983). In this case, Conseco rebutted the presumption that the collateral's value equaled the debt. The appraisal is sufficient proof that the manufactured home was valued at \$14,030.00. While the home actually sold for \$13,500.00, Petitioner received a credit of \$14,030.00 for the sale of the manufactured home. (Supp. Dillon Decl., dated February 8, 2005, ¶¶ 6-8). Therefore, even if there were legally insufficient Notice of Sale, the reasonableness of the sale under Washington law has been established and, as such, the presumption was sufficiently rebutted in this case. The Secretary may pursue any deficiency on the loan balance after the sale of the manufactured home.

II.

Second, Petitioner claims that she is not responsible for the debt because she never lived in the home and never made payments on the home. Specifically Petitioner states:

Matthew Halstengard and I purchased this manufactured home in 1991. Matt resided in the home and made the payments for over 10 years. Matt had a perfect payment history. I was informed in May of 2003 that Matt had passed away.

(Pet. Ltr., dated March 24, 2004).

As a cosigner on the installment note, Petitioner is jointly and severally liable with Halstengard for repayment of this debt. "Liability is characterized as joint and several when a creditor may sue the parties to an obligation separately or together." Mary Jane Lyons Hardy, HUDBCA No. 87-1982-G314, at 3 (July 15, 1987). Each cosigner is liable to the lender for the entire amount of the loan. Christine Kompus, HUDBCA No. 89-4597-L82 (Nov. 20, 1989). The Secretary is not required to seek repayment from the cosigner before bringing this action. David E. Cothorn, HUDBCA No. 87-2659-H188 (Dec. 29, 1987). Petitioner may have recourse against the cosigner under applicable state law, but her liability to the Secretary for this debt remains unaffected.

ORDER

For the reasons set forth above, I find that the debt, which is the subject of this proceeding, is legally enforceable against Petitioner in the amount claimed by the Secretary. The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative offset is vacated.

It is hereby **ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative offset to the extent authorized by law.

Jerome M. Drummond
Administrative Judge

April 29, 2005