



Office of Appeals
U.S. Department of Housing and Urban Development
Washington, D.C. 20410-0001

In the Matter of:

Lawrence Syrovatka,

Petitioner

HUDOA No. 07-A-CH-HH10
Claim No. 78-0648421

Frank C. Tenuta
Managing Attorney II
Marc Christofferson
AmeriCorps Member
Iowa Legal Aid
520 Nebraska Street, Suite # 337
Sioux City, IA 51101-1316

For Petitioner

Sara Mooney, Esq.
U.S. Department of Housing and
Urban Development
Office of Assistant General Counsel
for Midwest Field Offices
77 West Jackson Boulevard
Chicago, IL 60604

For the Secretary

DECISION AND ORDER

Petitioner was notified that, pursuant to 31 U.S.C. §§ 3716 and 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.

Petitioner 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 Office 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 and 17.153. As a result of Petitioner’s hearing request, referral of the debt to the U.S. Department of the Treasury for administrative offset was temporarily stayed by this Office on February 8, 2007 until the issuance of a written decision by the administrative judge. *Id.* § 17.156.

Background

On July 3, 1997, Petitioner executed and delivered to U.S.A. Distributors a Retail Installment Contract (“Note”) in the amount of \$12,939.00 for a property improvement loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary’s Statement (“Sec’y Stat.”), filed June 12, 2007, ¶ 2.) U.S.A. Distributors immediately assigned the Note to Mego Mortgage Corporation. (*Id.*, attach. Contract, p. 2.) On July 29, 2003, Altiva Financial Corporation F/K/A Mego Mortgage Corp., by its attorney-in-fact, Ocwen Federal Bank FSB, assigned the Note to City National Bank of West Virginia. (Sec’y Stat., ¶ 2, unmarked attach.) Thereafter, City National Bank of West Virginia assigned the Note back to Ocwen Federal Bank FSB. (Sec’y Stat., ¶ 2, unmarked attach.) Petitioner failed to make payments as agreed in the Note. (Sec’y Stat., ¶ 3.) Consequently, Ocwen Federal Bank FSB assigned the Note to the United States of America in accordance with 24 C.F.R. § 201.54. (*Id.*)

The Secretary has filed a Statement with documentary evidence in support of his position that Petitioner is indebted to the Department in the following amounts:

- (a) \$4,530.03 as the unpaid principal balance as of January 30, 2007;
- (b) \$3.77 as the unpaid interest on the principal balance at 1% per annum through January 30, 2007;
- (c) \$141.33 as administrative fees through January 30, 2007;
- (d) \$272.03 as the unpaid penalties through January 30, 2007; and
- (e) interest on the principal balance from January 30, 2007, at 1% per annum until paid.

(Sec’y Stat., ¶ 4, unmarked Ex.; Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD (“Dillon Decl.”), dated February 21, 2007, ¶ 4.) On or about April 11, 2005, a Notice of Intent to collect by Treasury Offset was sent to Petitioner. (Dillon Decl., ¶ 5.)

Discussion

Petitioner challenges the existence of the debt and states that he is not responsible for its payment. Petitioner asserts that: (1) a Notice of Intent to Collect by Treasury Offset was never received; (2) “his signature was forged on the note and mortgage documents;” and (3) the notary public fraudulently certified the loan documents. (Petitioner’s Letter (“Pet’r Feb. Ltr.”), filed February 8, 2008.)

24 C.F.R. § 17.151 provides that “[a] request for deduction from a Federal payment will be made only after the Secretary...provides the debtor with 65 calendar days written notice.” In addition, 31 U.S.C. § 3716(a) further provides “[t]he head of the agency may collect by administrative offset only after giving the debtor written notice of

the type and amount of the claim, the intention of the agency to collect the claim by administrative offset, and an explanation of the rights of the debtor....”

In this case, Petitioner states that he “never received the notice” because “[t]he house at 308 W. Athens, Marathon, Iowa had burned to the ground on April 12, 2004.” (*Id.*) Petitioner also states that “[h]is mailing address was never 308 W. Athens” because his “residence was at 1821 W[.] 5th Street, Sioux City, Woodbury County, Iowa.” (*Id.*) Petitioner finally asserts that “[h]e has lived in this home [1821 W. 5th Street] for decades[,]” “filed his taxes from this address[,]” and “received his social security benefits from this address.” (*Id.*)

In response, the Secretary acknowledges that “[o]n or about April 11, 2005 a notice of HUD’s intent to collect the debt by IRS Tax Refund Offset was sent to Petitioner.” (Sec’y Stat., ¶ 5.) The Secretary states that “the address shown on each of the loan documents...is 308 West Athens, Marathon, Iowa 50565.” (Sec’y Stat., ¶ 8.) In addition, the Secretary refers to Petitioner’s Comments/History Log, in which it states that “on October 7, 2004, the lender obtained an Experian credit report for Petitioner.” (*Id.*, unmarked attach.) According to the Secretary, “[t]he credit report shows Petitioner’s address as ‘308 W Athens St, Marathon IA 505658823.’” (*Id.*) The Secretary further explains that: “Beneath the address, the credit report says, ‘Rptd: 4-98 to 7-04,’ apparently indicating that this address was current through July, 2004. There is no more recent address shown. There is no indication that notice to Petitioner should be addressed anywhere else.” (*Id.*)

Furthermore, in response to an Order issued by this Office on April 18, 2008 to the Secretary, the Secretary stated:

Petitioner’s last known address for receipt of the Notice of Intent to Collect by Treasury Offset was 308 West Athens[,] Marathon, IA 50565. Attached is a copy of the Notice dated April 11, 2005, which was returned by the Post Office as “Attempted not known,” and “Not deliverable as addressed.”

(Secretary’s Brief in Response to Order dated April 18, 2008, attach., Supplemental Declaration of Brian Dillon, (“Suppl. Dillon Decl.”), dated April 29, 2008, ¶ 3.) The “DCAMS Case Remarks/History confirms that an address search conducted on February 4, 2005 provided no better address for Petitioner” and that a “SSN [Social Security Number] address search for Lawrence Syrovatka provided no new address for address.” (Suppl. Dillon Decl., ¶ 4, Ex. D.)

The requirements of 31 U.S.C. § 3716(a) were satisfied in this case by sending a written notice to Petitioner’s last known address at 308 West Athens, Marathon, Iowa 50565, and providing Petitioner with the opportunity to be heard prior to certifying his account for offset. *See also Stover v. Illinois Student Assistance Commission*, 2005 WL 3597743, at 8 (C.D. Ill.) (citing *Omegbu v. United States Department of Treasury*, 2004 WL 3049825 (7th Cir. 2004) (the Seventh Circuit noted that the requirements of [31

U.S.C.] § 3716(a) were satisfied by sending written notice to the debtor's last known address and providing him the opportunity to be heard prior to certifying his account for offset). Here, the Secretary has provided sufficient documentary evidence that the Notice of Intent to Collect by Treasury Offset was sent to Petitioner's last known address pursuant to 31 U.S.C. § 3716 (a). Therefore, I find the notice sent to Petitioner was legally sufficient.

Second, Petitioner asserts that "his signature was forged on the [N]ote and mortgage documents." (Pet'r Feb. Ltr.) This Office addressed the standard for ascertaining the authenticity of an alleged forgery in *Justito Poblete*, a case in which the Petitioner raised forgery as a defense against the enforceability of the debt. *Justito Poblete*, HUDBCA No. 98-A-SE-W302 (April 30, 2001). In *Justito*, the administrative judge stated: "This Board [Office] must ascertain if Petitioner's signature is authentic on the...Note to the extent that Petitioner is legally bound by his apparent signature." *Justito* at 2. "This Board [Office] must reach its finding by examining the evidence in the record of this proceeding and determining if Petitioner can establish, by a preponderance of the credible evidence, his proposition that he did not execute the...Note at issue." *Id.* The Petitioner in *Justito* provided documentary evidence in support of forgery, but the evidence was insufficient for a determination of forgery due to the lack of "documentation of an expert analysis comparing Petitioner's signature on the note with the submitted specimens." *Id.* at 6. Administrative judges are not handwriting experts, and thus, must depend on the scientific testimony of experts in order to find that a forgery has occurred. Such scientific testimony is absent in the record of this proceeding.

Petitioner instead submitted a signed Affidavit, in which he states that the "retail installment contract [Note] dated July 3, 1997 was not signed by me." (Petitioner's Documents ("Pet'r Docs."), filed June 12, 2007, attached Affidavit of Lawrence J. Syrovatka, ¶ 12.) Petitioner states that "[t]he ["]w["] and ["]r["] are not the way I sign my name." (*Id.*) Petitioner also "denies the existence of a contract" and contends that "[t]he Secretary must prove the existence of a contract." (Pet'r Docs., attached Legal Argument.) Other than Petitioner's affidavit, Petitioner failed to provide this Office with the necessary documentation that proves Petitioner's signature on the Note was fraudulent.

On November 20, 2007, Petitioner was specifically ordered to submit evidence that "*must* include an opinion by an expert qualified to analyze handwriting samples and make an opinion as to the authenticity of the signatures at issue[.]" (emphasis added.) In response, Petitioner stated that he was "not able to comply with the request for a handwriting expert analysis of the forged documents." (Petitioner's Response to Order, ("Pet'r Resp."), filed December 28, 2007.) Notwithstanding the lack of documentary evidence, Petitioner contends that "the three affidavits [filed with Petitioner's Initial Petition on June 12, 2007] are probative documentary evidence required by the Office of Appeals." (*Id.*) The Affidavits submitted by Petitioner are not probative and do not sufficiently substantiate Petitioner's allegations that his signature on the Note was forged or fraudulent. Although Petitioner asserts in his own Affidavit that his signature was forged on the Note, Petitioner did not provide sufficient and credible evidence in support

of his assertion. “Assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable.” *Bonnie Walker*, HUDBCA No. 95-G-NY-T300 (July 3, 1996).

This Office has decided a number of cases where forgery has conclusively been demonstrated. In *Justito*, this Office stated that oftentimes forgery “involves situations where the handwriting is clearly different or where the preponderance of the evidence, oftentimes with expert assistance, establishes that a signature is false.” *Justito* at 6 (citing *Kness-Steed*, HUDBCA No. 96-C-CH-V138 (June 24, 1997); *Wilson*, HUDBCA No. 90-5179-L658 (August 2, 1990)). In this case, without an expert analysis comparing Petitioner's signature on the Note with other specimens, a conclusive decision in Petitioner's favor cannot be made due to lack of evidence. Consistent with *Justito*, this Office finds that Petitioner has failed to rebut the presumption of authenticity of his signature on the Note, and also has failed to produce evidence to establish that his signature on this document, dated July 3, 1997, is forged.

Furthermore, Petitioner failed to submit documentary evidence which shows that this alleged criminal forgery was timely reported to, and investigated by, a law enforcement agency and documentary evidence, if any, of the result of that investigation as ordered by this Office on November 20, 2007. Instead, Petitioner responded by stating that when he “became aware of the forgery, he confronted Lori Niela” and “[s]he told him not to worry about it, [because] she would take care of the debt.” (“Pet’r Resp.”) Petitioner admitted that “[t]he criminal forgery was not reported to law enforcement” but reasoned that, “[a]t that point, the problem was being taken care of. Years later, she died. [Petitioner] saw no point in reporting the fraud at that time, because M[s]. Niela was deceased.” (*Id.*) Without probative documentary evidence such as a report to law enforcement to corroborate Petitioner’s allegation of forgery, I find that Petitioner’s claim of forgery on the Note, as a defense to the enforceability of this debt, must fail for lack of sufficient, credible proof.

Petitioner also claims his signature on the mortgage document was forged. Although Petitioner acknowledges in his Affidavit that “[a]n Iowa mortgage... notarized on July 3, 1997 shows [his] signature[,]” Petitioner asserts that “this is not [his] signature” because “[t]he [“]L[”] in Lawrence is not the normal [“]L[”] [he] used.” (Pet’r Docs., attach., ¶ 13.) Petitioner again failed to submit an authenticated handwriting analysis performed by a professional or expert to support his claim that his signature on the mortgage was forged. Thus, this Office is prevented from making a conclusive decision in Petitioner's favor on this issue.

Finally, Petitioner claims that the notary public fraudulently certified the loan documents. Petitioner states:

The Iowa mortgage is notarized by Jane L[.] Rohr in Polk County, Iowa. I have never met Jane L. Rohr. I did not appear before her to sign this document. On July 3, 1997, I was in Sioux City, Iowa. I was not in Polk County, Iowa, on July 3, 1997.

(*Id.* at ¶ 14.) As support, Petitioner merely asserts that he “know[s] of no other evidence... [to] submit regarding the notary fraudulently certifying the documents.” (Pet’r Resp.)

As addressed in the case of *First-Trust Joint Stock Land Bank of Chicago v. McNeff*, the Supreme Court of Iowa stated:

We start out with a legal proposition which is well established by this court in this state, that where the certificate of the notary is in due and legal form, the instrument is admissible in evidence without further proof, and the burden is upon the person challenging the truth of its contents to prove his contention by clear and convincing evidence. This court has repeatedly said that “great weight is given to the certificate of acknowledgement.”

First-Trust Joint Stock Land Bank of Chicago v. McNeff 264 N.W. 105, 107 (Dec. 17, 1935) (citing *Hutchins v. Jones Piano Co.*, 228 N.W. 281, 282 (1929)). See *Waitt Bros. Land, Inc. v. Montange*, 257 N.W. 2d 516, 520 (1977). The Iowa mortgage, dated July 3, 1997, is notarized by a notary public and the mortgage contains a certificate of acknowledgement. Despite Petitioner’s assertions, Petitioner has failed to meet his burden of proof by submitting documentary evidence to this Office to discredit the validity of the certificate of acknowledgement on the mortgage.

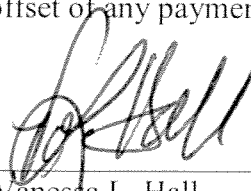
The Petitioner only submitted a letter from the Director of the Asset Recovery Division for the HUD Financial Operations Center, in which the Director “verified with the Iowa Secretary of State that Ms. Rohr [notary public] is still an active notary and that there has never been any disciplinary action taken against her, nor was her license ever revoked.” (Pet’r Feb. Ltr., attach.) Thus, I find that the loan documents are valid and properly certified and therefore admissible as evidence to support the enforceability of the debt.

Without any documentary evidence to corroborate Petitioner’s allegations that his signature on the Note or mortgage was forged, and without evidence to verify that the notary public fraudulently certified the mortgage, I find that Petitioner’s claims must fail for lack of sufficient, credible proof.

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 the Treasury for administrative offset is **VACATED**.

It is hereby **ORDERED** that the Secretary is authorized to refer this matter to the U.S. Department of the Treasury for administrative offset of any payment due Petitioner.

A handwritten signature in black ink, appearing to read 'V. Hall', is written over a horizontal line.

Vanessa L. Hall
Administrative Judge

November 14, 2008