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

In the Matter of:	
John Donahue, Petitioner	HUDOA No. 10-M-CH-LL100 Claim No. 7-80278286 OA

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For Petitioner

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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" or "the Secretary") 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.

On March 5, 2010, Petitioner made a request for a hearing concerning the existence, amount or enforceability of the debt allegedly owed to HUD. The Office of Appeals has jurisdiction to determine whether Petitioner's debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.170(b). The administrative judges of the Office of Appeals 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, this Office temporarily stayed referral of the debt to the U.S. Department of Treasury for offset on March 24, 2010.

Background

Sometime over ten years ago, Petitioner attended a seminar on "Property for Investment Purposes" presented by a Sonia Garza, who held herself out as a real estate developer. (Petitioner's Letter ("Pet'r's May Letter"), dated May 25, 2010 at p.1.) Sonia Garza convinced Petitioner to give her various pieces of personal information so that she could acquire properties on his behalf. (*Id.*)

On July 30, 1999, a Note and Deed of Trust were executed to secure a $25,000.00 home improvement loan that was insured under the provisions of the Title I Insurance Program. (Secretary's Statement ("Sec'y Stat."), filed Aug. 9, 2010, ¶ 1.) The Note and Deed of Trust name Petitioner as the borrower for the loan. (Sec'y Stat., Ex. 1, Deed of Trust and Note, attachs.) The purpose of this loan was to make renovations and improvements to a dwelling unit located at the address commonly known as 27075 Villa, Highland, California. (Sec'y Stat., ¶ 1.) Petitioner defaulted on the Note and consequently, the Note was assigned to HUD by the Money Store on September 11, 2000. (*Id.*)

HUD has been unsuccessful in its attempts to collect this debt from Petitioner. (Declaration of Brian Dillon, Director, Asset Recovery Division, Financial Operations Center of HUD ("Dillon Decl."), dated Mar. 31, 2010, ¶ 4.) The Secretary alleges that Petitioner is justly indebted to HUD in the following amounts:

(a) $24,863.38 as the unpaid principal balance as of March 31, 2010;
(b) $13,006.94 as the unpaid interest on the principal balance at 5% per annum through March 31, 2010; and
(c) interest on said principal balance from April 1, 2010, at 5% per annum until paid.

(*Id.*) A Notice of Intent to Collect by Treasury Offset, dated February 15, 2010, was mailed to Petitioner. (Sec'y Stat., ¶ 8.)

Discussion

The Deficit Reduction Act of 1984, 31 U.S.C. § 3720A, provides federal agencies with the remedy of administrative offset of federal payments for the collection of debts owed to the United States Government. In these cases, Petitioner bears the initial burden of submitting evidence to prove that the debt is not past-due or legally enforceable. 24 C.F.R. § 17.152(b); Juan Velazquez, HUDBCA No. 02-C-CH-CC049 (Sept. 25, 2003). Petitioner, through counsel, disputes the existence of the debt and argues that: (1) Petitioner's signature and initials were forged; (2) Petitioner did not authorize the Note and Deed of Trust to be signed by Sonia Garza; and (3) the Secretary cannot bring this claim because the Statute of Limitations has run.

First, Petitioner claims that his signature and initials on the Note and Deed of Trust were forged. Specifically, Petitioner declared that, "I have been the victim of identity theft since 1999 and have had to defend myself in many such actions. The purported signature on these documents as well as the initials are not mine." (Declaration of John A. Donahue, Jr., M.D.

("Pet'r's Decl."), dated Jun. 10, 2002.) Petitioner included copies of his credit report, income tax return, driver's license, checks, and notarized copies of signatures to support his argument that the signatures on the Note and Deed of Trust were not his. (Pet'r's May Letter, *attachs.*) Petitioner also noted that, "[i]t would not take a handwriting expert to recognize the difference between the careful penmanship of [Petitioner] and the crude forgeries upon the various documents." (Pet'r's May Letter, at p. 2.)

In response to Petitioner's argument that his signature and initials on the Note and Deed of Trust were forged, the Secretary claims that, "[Petitioner's] argument is misleading because it is especially noted that the Notary Public, Amparo G. Hernandez, certified that Sonia Garza provided satisfactory evidence that she executed the Deed of Trust securing the subject home-improvement loan as *Attorney in Fact* for Petitioner." (emphasis in original) (Sec'y Stat., ¶ 1.) The Secretary submitted a copy of the Deed of Trust on which a notary certified that Sonia Garza personally appeared as Petitioner's attorney in fact. (Sec'y Stat., Ex. 1, Deed of Trust at p. 6, *attach.*) As the Secretary has not alleged that the signatures and initials on the Note and Deed of Trust were executed by Petitioner's own hand, I find that Petitioner's argument of forgery to be irrelevant.

Second, Petitioner argues that he "did not cause a Note & Deed of Trust to secure a $25,000[.]00 loan on property located at 27075 Villa, Highland, California." (Petitioner's Letter ("Pet'r's August Letter"), dated Aug. 27, 2010, ¶ 1.) Rather, Petitioner argues,"[t]he statement that Notary Public, Amparo G. Hernandez <u>certified</u> that Sonia Garza provided satisfactory evidence as Attorney in Fact for Petitioner and that she had authority to do so is <u>totally</u> misleading!" (emphasis in original) (*Id.*) Petitioner also states that, "I have never been able to locate this [notary] who apparently had Garza sign a bogus signature for Dr. Donahue rather than sign her own name as Attorney-in-Fact." (internal quotations omitted) (*Id.*, at ¶ 1(a).)

The duties of a notary public are essentially state regulated. California Civil Code § 1185 states: "the purpose of a [notary's] certificate of acknowledgment is to establish the identity of such a person and the genuineness of the signature attached to the instrument." Cal. Civ. Code § 1185 (West 2000). This Office has found that "the certificate of acknowledgment is prima facie evidence of the truth of the facts stated within the document." *Juan Velazquez*, HUBBCA No. 02-C-CH-CC049, at p. 6 (Sept. 25, 2003) (citing, *Ryan v. Bank of Italy Nat'l Trust ans Sav. Assoc.*, 289 P. 863 (Cal. Dist. Ct. App. 1930)). As such, Petitioner must proffer evidence to rebut the presumption raised by the certificate of acknowledgment. In this case, Petitioner does not submit any documentary evidence to support this argument. Instead, Petitioner calls on the Secretary to produce the Power of Attorney that gave Sonia Garza authority to obtain the loan for Petitioner, and calls on this Office to demand in court testimony from the Notary Public. (*Id.*, at ¶ 1(a)-(b).) Petitioner has not submitted any credible evidence to show misfeasance or malfeasance in the performance of the duties of the duly licensed notary before whom Sonia Garza appeared. Accordingly, I find that Petitioner has failed to rebut the presumption of validity raised by the certificate of acknowledgement.

Further, although California Civil Code § 1095 states that, "[w]hen an attorney in fact executes an instrument transferring an estate in real property, he must subscribe the name of his principal to it, and his own name as attorney in fact," the U.S. Court of Appeals for the Ninth

Circuit held that, "section 1095's requirements could not adversely affect the rights of innocent third parties." *In re Nelson*, 761 F.2d 1320, 1322 (9th Cir. 1985) (citing *Foote v. Posey*, 330 P.2d 651 (Cal.Ct. App. 1958)). The *Foote* case went on to state that "the agent's failure to sign the principal's name as her agent did not minimize his authority to bind her in a transaction where third parties innocently relied on the facial validity of the deed of trust." *In re Nelson*, 761 F.2d 1320, 1323 (citing *Foote v. Posey*, 330 P.2d 651, 654-655). Indeed, this Office has held that when:

> the Secretary [takes] the loan note from the lender for value, in good faith and without notice that any party had a defense or claim in recoupment on the loan note, the Secretary is a holder in due course who has the legal right under California law to enforce the obligation of a party to pay the instrument, unless the Secretary had notice that a party had a defense or claim in recoupment set out in Section 3305(a) of the California Commercial Code.

Randolph L. Pitkin and Barbara Pitkin, HUDBCA No. 99-C-NY-Y181 (June, 14, 2000).

Lastly, Petitioner argues that "the Notice of Intent to Collect by Treasury Offset, dated February 15, 2010 was and is barred by the Statute of Limitations for any Note and Deed of Trust or any form of agreement executed in 1999!" (Pet'r's August Letter, at p. 2.) 31 C.F.R. § 285.2(d)(6)(i) states that:

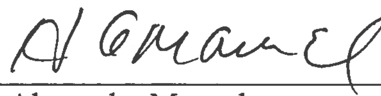
> Creditor agencies may submit debts to FMS for collection by tax refund offset irrespective of the amount of time the debt has been outstanding. Accordingly, all nontax debts, including debts that were delinquent for ten years or longer prior to December 28, 2009 may be collected by tax refund offset.

31 C.F.R. § 285.2(d)(6)(i) (2009). Pursuant to the regulation, which supersedes any conflicting statute of limitation existing under California law, the Secretary is not barred from collecting this debt.

ORDER

For the reasons set forth above, I find the debt that is the subject of this proceeding to be 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 federal payment due Petitioner.



H. Alexander Manuel
Administrative Judge

January 20, 2011