



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

In the Matter of:

Shirley Thomson,

Petitioner

HUDOA No. 09-M-NY-KK07
Claim No. 7210027580B

Shirley Thomson
1309 Mathews Ct., #313
Jasper, AL 35501

Pro se

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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”) 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 November 4, 2008.

Background

On December 8, 2003, Petitioner allegedly executed and delivered to the Secretary of HUD a Subordinate Note (“Note”) in the amount of \$27,976.92 in exchange for foreclosure relief. (Secretary’s Statement (“Sec’y Stat.”), filed February 17, 2009, ¶¶ 5-6, Ex. 4.) The Note

cites specific events which render the debt due and payable, one of which is the payment in full of the primary note, which was insured against default by the Secretary. (Sec'y Stat., ¶ 7, Ex. 4, ¶ 4(A)(i).) On or about July 19, 2005, the FHA insurance on the primary note was terminated when the lender informed the Secretary that the Note was paid in full. (Sec'y Stat., ¶ 8, Ex. 3, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), ¶ 4.) Petitioner failed to make payment to HUD. (Sec'y Stat., ¶ 9.) The Secretary has made efforts to collect the debt from Petitioner but has been unsuccessful. (*Id.*)

The Secretary has filed a Statement, with documentary evidence, in support of his position that Petitioner is currently in default on the Note and that Petitioner is indebted to HUD in the following amounts:

- a) \$20,065.97 as the unpaid principal balance as of October 30, 2008;
- b) \$66.88 as the unpaid interest on the principal balance at 4% per annum through October 30, 2008; and
- c) interest on the principal balance at 4% per annum from November 1, 2008, until paid.

(Sec'y Stat., ¶ 9, Ex. 3, Dillon Decl., ¶ 5.)

A Notice of Intent to Collect by Treasury Offset dated March 12, 2008, was sent to Petitioner. (Sec'y Stat., ¶ 10, Ex. 3, Dillon Decl., ¶ 6.) Petitioner filed a request for a hearing on October 27, 2008 ("Pet'r Hr'g Req.").

Discussion

31 U.S.C. §§ 3716 and 3720A provide federal agencies with a means of collecting debts owed to the United States Government. Social Security benefits are subject to administrative offset under 31 U.S.C. § 3716(c)(3)(A)(i). *Nicie Anne Smith (Dillehay)*, HUDOA No. 07-O-CH-HH11 (January 29, 2008). The burden of proof is on the debtor to show that the debt claimed by the Secretary is unenforceable and not past due. 24 C.F.R. § 17.152(b). Failure to provide documentary evidence that the alleged debt is unenforceable or not past-due shall result in a dismissal of the debtor's request for a review of this alleged debt. *Id.*

Petitioner disputes the existence of the debt in her name by alleging that her signature on the Note was forged. Upon first learning of the Note in August 2007, Petitioner states:

I was shocked over the amount of \$27,976.92 and my signature on the note. I swear I had no knowledge of this note until Mr. [Paul] Sheremeta [of HUD] sent me a copy. I don't know how my signature got on this note, but one thing [is] for sure if I had signed a note this large[,] I would have asked for a copy of it when it was signed. One thing I did notice that the note is not notarized [sic]. Therefore I don't believe this is a legal document and how can I be held responsible for this.

(Pet'r Hr'g Req.) By way of explanation, Petitioner states that she bought a house with her daughter Paula and son-in-law James in June 2000. (*Id.*) In 2003, Petitioner alleges:

the house payments went up excessively high and James started getting behind on the payments. ... Several months later James told me he had gotten everything worked out with the mortgage company (Washington Mutual) and that they were putting the past due payments & late charges in back of the note so that we would be back on track with the payments. From that time I thought everything was o.k. James also told me it was around \$6,000.00 that was put on the back of the loan.

(*Id.*) Petitioner attributes the signature to that of her son-in-law, and states: “I feel I am being treated unfairly for a debt that my son-in-law incurred and falsely put my name on this document.” (*Id.*)

Since the Subordinate Note was executed in Texas, Texas law provides the standard for analyzing the authenticity of the signature at issue in this case. *See Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938) (“Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state”); *Boseman v. Connecticut General Life Insurance Co.*, 301 U.S. 196, 202 (1937) (“In every forum a contract is governed by the law with a view to which it was made”). *See also Justito Poblete*, HUDBCA No. 98-A-SE-W302 (April 30, 2001) (applying California law to analyze a forgery defense to enforcement of a promissory note assigned to HUD).

Under Texas law, a person not represented by an agent “is not liable on an instrument unless the person...signed the instrument[.]” Tex. Bus. & Com. § 3.401(a)(1). Accordingly, “an unauthorized signature is ineffective” against the alleged signatory. Tex. Bus. & Com. § 3.403(a).

“The burden of establishing validity of a signature is on the person claiming validity, but the signature is presumed to be authentic and authorized....” Tex. Bus. & Com. § 3.308(a). This means that “[u]ntil some evidence is introduced which would support a finding that the signature is forged or unauthorized, the plaintiff [or in this case, the Secretary] is not required to prove that it is valid.” Official Comment 1 to UCC § 3-308. In this action to collect on the Note by administrative offset of federal payments, a finding for Petitioner must be made by a “preponderance of the credible evidence.” *Justito Poblete*, HUDBCA No. 98-A-SE-W302.

If the evidence produced is not enough to support a finding of forgery, “the presumption requires a finding [that the signature is authentic].” Official Comment 1 to UCC § 3-308. However, if sufficient evidence is introduced to support a finding of forgery, “the burden of establishing the signature by a preponderance of the total evidence is on the plaintiff,” or in this case, the Secretary. *Id.*

As evidence of the alleged forgery, Petitioner submitted a handwriting comparison from Drexler Document Laboratory, LLC, consisting of an analysis of the signature of Shirley Thomson. (Petitioner’s Submission, filed November 28, 2008.) The analysis was conducted by Steven G. Drexler, a forensic document and handwriting examiner in private practice, and member of the American Board of Forensic document Examiners, who is also qualified as an expert witness in Federal Criminal Court and four other courts. (*Id.*) He is formerly the Senior

Questioned Document and Handwriting Examiner of the Alabama Department of Forensic Sciences, with experience in forensic sciences dating back to 1980. (*Id.*)

Mr. Drexler compared the questioned signature from the Note with ten normal-course-of-business signatures of Petitioner. (*Id.*) He lists seven “unexplained inconsistencies” involving various discrepancies between the alleged signature and the course-of-business signatures. The inconsistencies found in the disputed signature are: (1) lack of continuous pen movement revealing a possible pen lift between the “T-h” combination of Thomson; (2) lack of continuous pen movement revealing a possible pen lift on the loop of the “h” in Thomson; (3) the presence of baseline loops and a lower arch of the “m” in Thomson; (4) a large, wide open loop below the baseline in the “y” of Shirley; (5) the “T” in Thomson lies below the baseline; (6) the “S” in Shirley not being the tallest letter; and (7) the “son” combination of letters exhibiting a downward slant. (*Id.*) Based on these inconsistencies, Mr. Drexler concludes: “it is the opinion of the undersigned that there are strong indications that the questioned signature was not written by the author of the Shirley L. Thomson handwriting standards.” (*Id.*)

This Office must determine whether this expert opinion constitutes sufficient evidence to support a finding that the signature is forged or unauthorized. To the untrained eye, the questioned signature shares a close, undeniable resemblance to the other signatures of Petitioner in the record. This Office however gives greater weight to the opinion of the handwriting analysis conducted by a qualified professional. In this case, the professional discussed not merely a few, but *seven* discrete discrepancies with the alleged signature. Given his 28 years of experience in the field, he considers these discrepancies “strong” indications that the signature is not that of Petitioner. Therefore, by a preponderance of the evidence, the evidence submitted by Petitioner is sufficient to support a finding that the signature is forged.

Pursuant to the Texas Business and Commercial Code § 3.308(a), the burden now shifts to the Secretary to produce evidence that establishes the validity of the signature by a preponderance of all the evidence. The Secretary has filed a “Report of Examination” by the Federal Bureau of Investigation Laboratory. (Sec’y Stat., Ex. 2, Supplemental Dillon Decl., Ex. A.) The report compared the signature on the Note to fifteen documents bearing the known signature of Petitioner. (*Id.*) The report concludes:

Due to the lack of detail and clarity in the submitted photocopies and the presence of characteristics in the questioned signature not observed in the available known writing, no definite conclusion could be reached whether the questioned “Shirley L. Thomson” signature on [the Note] was or was not prepared by SHIRLEY L. THOMSON, writer of [the known signatures of Petitioner]. However, characteristics in common were observed when comparing the questioned signature with the known writing [of Petitioner] to indicate she may have prepared that signature.

(emphasis added) (*Id.*) The Secretary also filed a letter allegedly from Petitioner’s son-in-law James, who states that neither he nor his wife forged Petitioner’s signature, and that it is “100% her signature.” (Sec’y Stat., Ex. 2, Supplemental Dillon Decl., Ex. J.) The Court notes, for the record, that the letter was not notarized or rendered under oath, and contains hearsay evidence as to Petitioner’s son-in-law’s statement regarding his wife’s statements and “opinion” regarding the authenticity of Petitioner’s signature.

In analyzing the authenticity of the signature, this Office affords greatest weight to the report by the Federal Bureau of Investigation Laboratory. This analysis points out some discrepancies in the signatures, however, it is, at best, inconclusive as to whether the signature on the Note was rendered by Petitioner.

The Secretary further argues that Petitioner failed to provide proof that she reported a forgery to law enforcement officials or evidence of a court action filed against her son-in-law, and therefore her claim must fail for lack of proof. (Sec’y Stat., ¶ 18.) While these actions might provide indicia that a forgery has not occurred, they are merely circumstantial in nature, and are not the *sine qua non* standard of proof for forgery.

In examining the totality of the evidence, the Secretary’s admittedly, inconclusive evidence is insufficient to establish the validity of the signature by a preponderance of the evidence. *See* Official Comment 1 to UCC § 3-308.

Although I find that the disputed signature was not made by Petitioner, an unauthorized signature may nonetheless be ratified. Tex. Bus. & Com. § 3.403(a). Ratification is “a retroactive adoption of the unauthorized signature by the person whose name is signed and may be found from conduct as well as from express statements.” Official Comment 1 to UCC § 3-403. For example, ratification may be found “from the retention of benefits received in the transaction with knowledge of the unauthorized signature.” (*Id.*) In this case, Petitioner may have retained the benefits of the transaction by being able to retain ownership and remain in the home by avoiding foreclosure. However, it is apparent that she did not have knowledge of the unauthorized signature, and therefore could not have adopted the signature. Because the unauthorized signature is not effective against Petitioner, the Note is not enforceable against Petitioner. Tex. Bus. & Com. § 3.403(a).

Petitioner has met her burden of proving that this debt is unenforceable. This Office finds, therefore, that the claim that is the subject of this proceeding is not legally enforceable against Petitioner in the amount claimed by the Secretary.

ORDER

For the reasons set forth above, the Order imposing the stay of referral of this matter to the U.S. Department of the Treasury for administrative offset shall remain permanently. It is hereby

ORDERED that this matter is **DISMISSED** with prejudice. The Secretary is not authorized to seek collection of this outstanding obligation by means of administrative offset of any federal payments due to Petitioner.

/s/ original signed

H. Alexander Manuel
Administrative Judge

April 16, 2009