

In the Matter of:)	
)	
Juan Velazquez,)	HUBBCA No. 02-C-CH-CC049
)	Claim No. 77-098508-0
Petitioner)	
)	

Juan Velazquez
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Pro se

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For the Secretary

Decision and Order

Petitioner was notified by a Due Process Notice 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. The claimed debt has resulted from a defaulted loan that was insured against non-payment 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. § 17.150-17.170; 24 C.F.R. § 20.4(b)). As a result of Petitioner's request, referral of the debt to the Internal

Revenue Service ("IRS") or to the U.S. Department of Treasury for administrative offset was temporarily stayed by the Board.

Discussion

31 U.S.C. § 3720A provides Federal agencies with a remedy for the collection of debts owed to the United States Government. Pursuant to the regulations implementing this statute at 24 C.F.R. §§ 17.150-17.170, the Secretary has filed a Statement with documentary evidence which shows that on January 6, 1995, Petitioner executed and delivered to Barrons Mortgage Company an installment note in the amount of \$59,898.60 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, hereinafter "Secy. Stat.," para. 2-3; unmarked exhibit). This note was secured by a Deed of Trust. (Secy. Stat., unmarked exhibit). Thereafter, Barrons Mortgage Corporation assigned the note to Mego Mortgage Corporation. Petitioner subsequently failed to make payments on the note. Mego Mortgage Corporation assigned the note to the United States of America in accordance with 24 C.F.R. § 201.54. (Secy. Stat., para. 3, unmarked exhibit). The Secretary's documents further show that Petitioner is indebted to the Secretary in the following amounts: \$24,290.91 as the unpaid principal balance as of May 30, 2002; \$3,219.91 as the unpaid interest on the principal balance at 5% per annum through May 30, 2002; and interest paid on said principal balance from June 1, 2002 at 5% per annum until paid. (Secy. Stat., Exh A, Declaration of Lester J. West, para. 4).

In challenging the enforceability of this debt against him, Petitioner contends that the debt is unenforceable because his signature was forged on the note and he did not receive any of the loan proceeds. Petitioner alleges that forgery and fraud were committed by Minerva Moreno ("Moreno") and Raul Velasquez who worked as real estate sales representatives for American Richland Company. (Pet. undated submission, filed on May 28, 2002). Petitioner states that in 1994, Laura Cordero ("Cordero") bought a house located at 7330 Petrol Street, Paramount, California, and that Petitioner co-signed with Cordero on the mortgage note. He states that Moreno and Raul Velasquez were the real estate agents for the purchase and that the broker was Abraham Rezex, whose license was restricted, at a date not specified, by the California Department of Real Estate. Petitioner further states that he and Cordero gave their identification and personal documentation to Moreno and Raul Velasquez who, without Petitioner's knowledge, used this documentation to purchase another property located at 11931 Cedarvale Street, Norwalk, California, in his and Cordero's name

and subsequently to obtain a HUD-insured home improvement loan on that property. (Pet. undated letter, filed June 10, 2002; Secy. Stat., unmarked exhibits, Title Report and Deed of Trust).

Petitioner claims:

We trusted these people, and gave them all of our identifications[sic] and personal documentation. Without us knowing, they bought another property using my name fraudulently.

While they were making the payments we were ignorant[sic] to what was going on. All of the documentation of the property was going to 11931 Cedarville [S]t. Norwalk, Ca. 90650, [the]place where [Moreno and Raul Velasquez] lived. When we started receiving [notices for delinquent payments], we investigated and found out that the house was being collected[sic] by the bank, also there was a \$25,000 loan for repairs on the house.

We never saw this property and don't know if any repairs were actually done. (Pet. undated letter, filed June 10, 2002).

Petitioner and Cordero subsequently filed a complaint with the Department of Real Estate in Los Angeles, California and specifically with Al Spiegel, Deputy Commissioner of that office. Id. Petitioner has submitted a letter dated November 6, 1997 from Spiegel in connection with the investigation by the Department of Real Estate. (Pet. unmarked exhibit filed June 10, 2002). Petitioner further states that Moreno made mortgage payments on the Cedarvale property and payments on the property improvement loan with Moreno's personal checks. Petitioner states that he obtained this information from Mego Mortgage. (Pet. undated submission, filed June 10, 2002).

Petitioner denies that he owns the Cedarvale property, that he applied for the subject home improvement loan, that he appeared before a Notary Public named Leopoldo Alvarez to verify his signature on the loan documents, or that he knew about the home improvement loan proceeds until he was given a copy of the loan proceeds check by Spiegel. The check was made out to Petitioner and Cordero, and the endorsing signatures purport to be those of Petitioner and Cordero. However, Petitioner denies

that he received or signed this check, and states that his name is misspelled in the endorsing signature. Petitioner has submitted a copy of both sides of the check. (Pet. undated submissions, filed May 28 and June 10, 2002).

On December 6, 2001, the Secretary submitted the loan documents and signature specimens taken from Petitioner to the Federal Bureau of Investigation ("FBI") for analysis. (Secy. Stat., Exhibit A, para. 6). The FBI Report of Examination dated March 18, 2002 concluded that:

A definitive determination could not be made as to whether or not the K1 writer, Juan Velazquez, prepared the questioned signature, "Juan Velazquez" and/or "Juan Velasquez," appearing on the Q1 through Q8 specimens due to the process of characteristics appearing in the questioned signatures which could not be accounted for in the known writing and characteristics indicative of simulations which appear in the Q1 through Q6 signatures. From the limited comparisons that could be conducted, some characteristics were observed which indicated that the K1 writer, Juan Velazquez, may not have prepared the questioned signatures appearing on the Q1 through Q6 specimens. (Secy. Stat., Exhibit B).

The FBI recommended that additional handwriting specimens "be obtained from anyone suspected of having prepared the questioned writing." *Id.* The Board is unaware of whether this recommendation was acted upon by the Secretary.

The Secretary has submitted a copy of a Title Report along with a copy of the Deed of Trust for the Cedarvale Street property purportedly signed by Petitioner and Cordero in the presence of a Notary Public on December 20, 1994. (Secy. Stat., Exhibit C and unmarked exhibit). The Secretary has also submitted an Inspection Report dated October 21, 1995, and a detailed letter from John Sexton, Claims Manager, Mego Mortgage Corporation to HUD's Title I Claims Examination Section dated February 19, 1997. (Secy. Stat., unmarked exhibits). In that letter, Sexton states that Mego Mortgage had investigated the claim of Petitioner and Cordero, and had concluded that Petitioner and Cordero "had indeed signed the loan documents, received the check for the improvements, and that the improvements were done to the property in which they lived." Sexton further stated that Petitioner and Cordero were both employed as sales agents for CASA Lenders, Incorporated.

Sexton's extensive hypothetical allegations, theories, and suppositions which are also set forth in this letter are conjectural, speculative, and uncorroborated, and shall be given no probative value or consideration in the determination of this matter. (Secy. Stat., Exhibit C).

I find that Petitioner has failed to provide sufficient documentary evidence to prove that his signatures on the relevant documents in this matter were forged. The FBI analysis did not conclusively support Petitioner's claim that his signature was forged on the loan documents. Petitioner has not submitted to the Board documentation of the purchase of the Petrol Street realty on which he claims he was a co-signer with Cordero on the mortgage note. Petitioner has not submitted a statement of any kind from Cordero corroborating any of his allegations despite Petitioner's admittedly close relationship with her. Petitioner has not submitted evidence of false bank accounts in his name or bank copies of Moreno's checks which he believes were sent by Moreno in payment on the Cedarvale mortgage and on the home improvement loan despite Petitioner's claims that he was informed of these payments by "Joe" of Mego Mortgage. Petitioner has submitted no statement from any employee of a financial institution in support of his allegation that the proceeds of the home improvement loan were in fact deposited into a bank account that was not his. Petitioner has submitted no documentation that this alleged theft of the loan proceeds was reported to police authorities. While Petitioner has submitted a document which shows that at some time a restriction was placed upon the license of broker Abraham Rezex by the California Department of Real Estate, there is nothing in that document which shows that the restriction was the result of improprieties relating to the defaulted home improvement loan at issue in this proceeding. (Pet. unmarked exhibit, filed October 7, 2002).

On multiple occasions Petitioner was given the opportunity to present documentary evidence to support his allegation of forgery, yet he has failed to do so. In a telephonic conference on May 6, 2003, Petitioner represented to the Board that he would not be able to produce any witnesses, with the possible exception of Spiegel, at an oral hearing in his city "who either participated in or had knowledge of this alleged forgery, such as law enforcement officers, bank employees, a notary public and real estate licensees." (Summary of Telephonic Conference and Order dated May 15, 2003). As a result of Petitioner's inability to produce such witnesses at an oral hearing to substantiate his allegations, no oral hearing was scheduled and

Petitioner was advised that this matter would be adjudicated on the written record. Petitioner was then ordered to:

submit to this Board a copy of the file, with certification of authenticity, relating to this matter which Petitioner states is in the possession of Al Spiegel, Deputy Commission[er], Department of Real Estate, in order for the Board to determine whether the investigation of Petitioner's claims of forgery by the California Department of Real Estate did in fact result, as Petitioner alleges, in an adverse action against certain individuals named by Petitioner to have perpetrated a fraud by forging Petitioner's name on documents which resulted in a HUD-insured loan, the default of which is the subject of this proceeding. (Summary of Telephonic Conference and Order dated May 15, 2003).

The Board did not receive any documentary evidence from Petitioner in compliance with this Order.

Petitioner claims that the notary fraudulently certified the loan documents by certifying the documents in his absence. (Petitioner's undated letters, filed on May 28 and June 10, 2003). As the Board stated in Justito Poblete, HUDBCA No. 98-A-SE-W302 (April 30, 2001), which also involved an alleged forgery of a check issued pursuant to a home improvement loan:

The duties of a notary public are essentially state regulated. California Civil Code § 1185 (West 2000) 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)).

The certificate of acknowledgement is prima facie evidence of the truth of the facts stated within the document. Ryan v. Bank of Italy Nat'l Trust ans Sav. Assoc., 289 P. 863 (Cal. Dist. Ct. App. 1930). Further, if a notary is negligent in the duty to properly

certify documents, the notarized documents could be considered void and the notary would be held liable. McWilliams v Clem, 743 P.2d 577 (Mont. 1980); Farm Bureau Fin. Co., Inc. v. Carney, 605 P.2d 509, 514 (Idaho 1980).

However, Petitioner has offered neither proof to substantiate his allegation that he did not appear before the notary to execute the loan agreement as the Secretary's documents indicate, nor reliable credible evidence to show misfeasance or malfeasance in the performance of the duties of the duly licensed notary before whom Petitioner and Cordero presumably appeared. Petitioner has failed to rebut the presumption of authenticity of the notarized signature on the document at issue. Accordingly, I conclude that there is insufficient evidence in the record of this proceeding to find that Petitioner's signature on the Deed of Trust was not properly notarized on December 20, 1994.

Petitioner states in his undated letter received by the Board on October 7, 2002: "I [will] send you the address of Ms. Minerva Moreno if you want to continue the investigation." Petitioner clearly misunderstands the purpose of this proceeding. This Board is not empowered to conduct an investigation of this alleged fraud on behalf of Petitioner or any other party, public or private. In this matter, this Board is only authorized to determine, after a review of documentary evidence, whether the debt at issue is past-due and legally enforceable against Petitioner. 24 C.F.R. § 17.152.

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). Petitioner, however, has failed to present credible evidence that the alleged debt is not past-due and legally enforceable in the amount claimed by the Secretary. Inasmuch as Petitioner has failed to provide documentary evidence to substantiate his position, his allegations of forgery must fail for lack of proof. Elizabeth Aragon, HUDBCA No. 97-C-SE-W231, (October 28, 1997) citing Nona Mae Hines, HUDBCA No. 87-1907-G240 (February 4, 1987). Assertions without evidence are not sufficient to show that the debt claimed by the Secretary is not past-due or enforceable. Tammie and Donald Purcell (citing Bonnie Walker, HUDBCA No. 95-G-NY-T300 (July 3, 1996)).

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 this matter to the IRS or the U.S. Department of the 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 of any Federal payments due to Petitioner.

Judge David Anderson
Administrative Judge

September 25, 2003