



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

In the Matter of:	:	
Jeffrey Shook,	:	HUDOA No. 11-M-NY-AWG94
Petitioner	:	Claim No. 721006647

**RULING AND ORDER**

The Court issued a Decision and Order in this case on October 11, 2011 (“Decision”). On December 16, 2011, Petitioner filed a letter (“Pet.’s Ltr.”) with attachments, stating:

As you can see the above signature is not mine. I am enclosing a copy of my wage garnishment on my check stub [plus] also a copy of my driver’s license so you can see my signature . . . . This unlawful wage garnishment has been a strain on me financially, hopefully you can resolve this as soon as possible. (Pet.’s Ltr., at 1.)

Petitioner’s request is hereby deemed to be a Motion to Reopen pursuant to 24 C.F.R. §17.152(d).

In support of his motion, Petitioner makes the following two arguments. First, he argues that his debt to HUD is not enforceable because his signature on the note was forged. (Pet.’s Ltr., at 1.) Second, he argues that the wage garnishment should be stopped because it is causing him financial hardship. (*Id.*)

As to both arguments, I find that the entirety of Petitioner’s position consists of argument and evidence that he was given more than ample time to file, yet did not file, prior to the issuance of the Decision. (*See* Order, dated August 11, 2011 ordering Petitioner to file documentary evidence in support of his position “on or before September 6, 2011.”) (*emphasis in original.*) Petitioner was also informed that: “Failure to respond to this Order shall result in sanctions [...] including judgment being entered on behalf of the opposing party.” (*emphasis in original.*)

As for the claim of forgery, because the subordinate Note was executed in South Carolina, that state's law provides the standard for analyzing the authenticity of the signature at issue in this case. *See Erie Railroad Co. v. Tomkins*, 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. Conn. Gen. Life Insur. 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 In the Matter of Justito Poblete*, HUDBCA No. 98-A-SE-W302 (Apr. 30, 2001) (applying California law to analyze a forgery defense to enforcement of a promissory note assigned to HUD).

Under South Carolina law, "[a] person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument." S.C. Code Ann. § 36-3-401. "If the validity of a signature is denied . . . the burden of establishing validity is on the person claiming validity," S.C. Code Ann. § 36-3-308; *Pee Dee Production Credit Ass'n v. Joye*, 284 S.C. 371 (1984), and, "the signature is *presumed* to be authentic." *Id.* (emphasis added).

This presumption operates as follows:

Defendant [or in this case, Petitioner] is required to make some sufficient showing of the grounds for the denial before the defendant [or here, HUD] is required to introduce evidence. The defendant's evidence need not be sufficient to require a directed verdict, but it must be enough to support the denial by permitting a finding in the defendant's favor. Until introduction of such evidence the presumption requires a finding for the plaintiff. Once such evidence is introduced the burden of establishing the signature by a preponderance of the total evidence is on the plaintiff.

S.C. Code Ann. § 36-3-308, comment 1. In this action to collect on a note by administrative wage garnishment, a finding for Petitioner must be made by a "preponderance of the credible evidence." *Justicio Poblete*, HUDBCA No. 98-A-SE-W302.

The government has come forward with a sworn declaration filed by Brian Dillon, director of the Asset Recovery Division, HUD Financial Operations Center stating that "the Petitioner executed a subordinate note and subordinate mortgage in favor of the Secretary of the Department of Housing and Urban Development." (Secretary's Statement, Exhibit B. ¶ 4) This declaration was filed on May 17th, 2011, and since that time, Petitioner has failed to come forward with substantial evidence sufficient to prove that the signature appearing on the subordinate note in this case was forged.

As evidence of the alleged forgery, Petitioner proffered the following two documents: a photocopy of a South Carolina driver's license and a "signature page" of the promissory note in this case. The license contains the name of the Petitioner, Jeffery Shook, in block letters above a signature. The promissory note contains a signature block with the words "Jeffery Shook" printed beneath a signature.

To the untrained eye, the proffered signatures share a close resemblance. However, this Court cannot act as a handwriting expert, and cannot scientifically determine that these signatures are identical. *See e.g. In the Matter of Shirley Thompson*, HUDBCA No. 09-M-NY-KK07 (April 16, 2009)(Court refused to make a comparative handwriting analysis in a forgery case). In examining the totality of the evidence, the Petitioner's uncorroborated evidence is insufficient to overcome the presumption that the signature on the note is valid. It is therefore, this Court's finding that the Petitioner is indebted to HUD, and the Decision of October 11, 2011, is **AFFIRMED**.

Turning to Petitioner's claim of financial hardship, Petitioner, "may, at any time, request a review by the agency of the amount garnished, based on materially changed circumstances." 31 C.F.R. § 285.11(k)(1). Petitioner argues that "this wage garnishment has been a strain on me financially, hopefully you can resolve this as soon as possible." (Pet.'s Ltr., at 1.) However, this statement is insufficient to prove financial hardship, let alone, to prove that Petitioner's circumstances have *materially changed* to warrant review by the agency.<sup>1</sup>

Because Petitioner's motion fails to raise any newly-discovered material evidence, and upon consideration, Petitioner's Motion to Reopen is **DENIED**. Accordingly, it is

**ORDERED** that the administrative wage garnishment order authorized by the Decision and Order, *In re: Jeffrey Shook*, HUDOA No. 11-M-NY-AWG94, dated October 11, 2011 shall NOT be modified and shall remain in full force and effect unless and until modified by further Order of this Court.

February 14, 2012



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H. Alexander Manuel  
Administrative Judge

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<sup>1</sup> Petitioner was ordered to submit any evidence of financial hardship, on or before, September 6, 2011 (*See Order*, dated August 11, 2011). Petitioner failed to file such evidence before that date.