

SOUTH BROOKLYN LEGAL SERVICES

Brooklyn Legal Services Corp. B • John C. Gray, Project Director
105 Court Street, Brooklyn, NY 11201 • (718) 237-5500 • Fax (718) 855-4189

Statement of Waverly Taliaferro Consumer/ Social Security Recipient New York, New York

September 20, 2007

Senator Max Baucus, Chair
Senate Finance Committee
Washington DC 20510

Re: September 20, 2007 Hearing concerning freezing of bank account

Dear Senator Baucus and other members of the Senate Finance Committee,

Thank you for inviting me to speak today.

My name is Waverly Taliaferro. I am 70 years old. I was born and raised in Virginia. I served two years in the U.S. Army in the "Proving Grounds" of New Mexico as a motion picture photographer. After leaving the Army, I married my wife, Millie and continued working in the photography industry. In 1980, we moved into a studio apartment in New York City where we still live today. In 2001, I retired at age 65.

Since retiring in 2001, my income is limited to my Social Security check. It is currently \$1508 a month. I have no nest-egg. While my wife Millie, recently started to work, her wages are not great.

Like others, Millie and I got credit cards while working. We never believed we could not pay them. However, life sometimes throws you a curve-ball. In 2003, Millie lost her job. Because the rent on our studio apartment is more than half my Social Security check, this left only about \$600 a month to pay for food, medicine, utilities, and other necessities. Consequently, Millie couldn't pay her credit card bill.

On Monday, August 14, 2006, the credit card debt caught-up with us. Our bank account at Citibank was frozen. Millie was not working. The account had only \$47 in it, all of which was left over direct deposit Social Security from July. I was not even aware of the freeze until Wednesday, August 16, the day my next direct deposit Social Security check was due. I learned of the freeze when I tried to withdraw money from an ATM to buy groceries. A Citibank

Towards justice and dignity for all • Por justicia y dignidad para todos

employee could not help me, but told me to find a lawyer.

Millie, through persistence and luck, found a lawyer the next day at South Brooklyn Legal Services. Our lawyer gathered papers, all from the bank, and then on day seven of the freeze, faxed them with a letter to the creditor's lawyer. Our lawyer thought the account would be open in a week.

Of course bills were coming due (ConEdison, cable, phone, and rent.) While we had family in Virginia, Millie and I thought we could and should weather this on our own.

Eleven days after the account was frozen, the creditor wanted more information before it released the account. Our lawyer thought this request excessive, but not illegal, and that complying would be quicker than going to court (a two to three week procedure.) On day fifteen, the creditor added a new condition. Millie had to call them to work out a payment plan before it would release the account. Since Millie had no income, this meant my Social Security. After our lawyer threatened to sue them, the creditor told Citibank on day 18 of the freeze to release the account. Not until day 23 did Citibank unfreeze it.

I then discovered that Citibank had taken \$45.00 as a fee for honoring the restraint. While it wasn't a huge amount of money, it seemed like they owed me an apology, not a charge. Although both I and my lawyer asked Citibank to return the fee, it never did.

Getting by with no money for 23 days was quite difficult. We ate all our staples, spent the silver dollars I'd saved as keep-sakes, and then survived off a ten pound bag of brown rice. Eating brown rice, three times a day, Sunday to Saturday, is pretty tedious. Amazingly, neither Millie or I got sick. Rather, we just lost weight. I lost forty pounds. Millie's dress size went down three sizes.

During those 23 days, we got used to being hungry. We got used to having no entertainment other than walking to the library or reading a book. We got used to the creditor's delay tactics.

But what we couldn't, and haven't gotten use to is the fear that this dehumanizing experience could happen again. One morning we could find ourselves again eating rice and scrounging for loose change in the sofa.

Since August 2006, I've gotten my Social Security in the mail. To cash it, I have to go to a seedy Cash Checking store on 9th Avenue. It's slightly unnerving; a lot of unhappy poor people loitering and waiting in line. I pay \$23.00 to cash my \$1509 Social Security check. Millie worries that someone will mug me. But what upsets me is my loss of dignity. I worked all my life and earned my Social Security check. Each time I enter the cash checking store, I feel like a cheat or welfare recipient incapable of pulling my life together.

In March 2007, my lawyer called me with good news. J.P. Morgan Chase had a written policy that it would not restrain a bank account that contained only direct deposit Social Security. In other words, I could safely bank again. So I opened an account at Chase. I even got a \$100.00 signing bonus when I told them I wanted direct deposit. This made me feel great, like a big leaguer. Sixteen days later, my Chase account was frozen again. My March Social Security check was then directly deposited into the frozen account, becoming unavailable.

My lawyer explained that Chase was legally correct in restraining the account as it contained \$25.25 in left over money from the \$100 signing bonus. Luckily, Millie was working by this time, and we did not have to go hungry during this second freeze. Getting the Chase account released, even with my lawyer helping me, took about a month and involved the same song and dance as before. I lost money in bank fees as well.

Millie and I are good people. We have worked all our lives. We are exploring our options for dealing with our debts. Until then, we need a safe place to deposit my Social Security check. When I was in the New Mexico Proving Grounds 50 years ago, I saw the government use its energy and intellect to create powerful weapons that kept us safe. Senators, please apply that same energy and intellect to this simple problem.

Thank you.

_____-s-_____
Waverly Taliaferro
New York, New York

**Supporting Statement of Johnson M. Tyler, Esq.
SSI Unit Director
And Attorney for Mr. Waverly Taliaferro**
South Brooklyn Legal Services
105 Court Street,
Brooklyn, NY 11201
718-237-5548 Johnsont@sbls.org

September 20, 2007

Senator Max Baucus, Chair
Senate Finance Committee
Washington DC 20510

Re: September 20, 2007 Hearing concerning freezing of bank account

Dear Senator Baucus and other members of the Senate Finance Committee,

Waverly Taliaferro's story is sadly typical.

Social Security Is Exempt From Debt Collection

For the last 18 years, I have worked at a legal services office helping disabled and impoverished New Yorkers qualify for Social Security and Supplemental Security Income benefits (also known as SSI.) SSI is a need based benefit that pays about \$650 a month, while

Social Security is based on a person's work history and pays from \$300 to well over \$1500 a month.

For most of my clients, a monthly SSI or Social Security check is their only income. Take it away, and they would not be able to pay their rent, buy food, or purchase medicine. Indeed, about 750,000 New Yorkers have no other source of income other than their monthly Social Security or SSI checks.¹ Because Social Security and SSI are this nation's original safety net, it's illegal for creditors to take either benefit. 42 U.S.C. § 407(a) and § 1383(d)(1) .

Debt Collectors Are Freezing Social Security Benefits

Until about 2001, very few SBLS clients had problems involving creditors taking their Social Security payments.² This has changed radically in the last few years. Now, I and other legal services offices regularly receive calls from elderly or disabled persons with the same problem as Mr. Taliaferro.

While Restraining A Bank Account Containing Social Security Is Easy and Legal , Lifting the Restraint is Difficult

This scenario occurs not due to some scam, computer hacking, or deceptive debt collection practice. Rather, it is completely legal (although I and others are challenging the Constitutionality of the practice.³) And getting an account unfrozen, even when it contains only exempt Social Security payments (that the creditor has no legal right to) is time consuming, cumbersome, and likely to fail if the debtor is unrepresented. The prescribed method to lift a restraint is either to go to court and prove the account contains exempt money (NY CPLR 5239 and 5240), or to try to negotiate a settlement with the debtor (by proving the account contains only Social Security.) Either of these routes typically take 2 - 4 weeks, during which time the Social Security recipient must borrow money, get help from food pantries, and beg for patience with his or her landlord. Ironically, the evidence one needs to prove the exemption - bank statements showing the origin of the money is direct deposit Social Security- is held by the bank who could have asserted the exemption in the first place. And when the bank account is unfrozen, the Social Security recipient's account balance has been reduced by \$100 - \$300 in bounced check and legal processing fees collected by the bank.

¹ These numbers are derived from the Social Security Administration's publication, *Fast Facts & Figures about Social Security*, (June 2003) which is available at http://www.ssa.gov/policy/docs/chartbooks/fast_facts/2003/.

² In Huggins v. Pataki, 2002 U.S. Dist. LEXIS 13664 (E.D.N.Y. 2002), SBLS first challenged the constitutionality of restraining a bank account containing only direct deposit social security. That claim was dismissed and appealed to the Second Circuit. However, the plaintiff died prior to the Circuit ruling on the appeal, effectively mooting out the case. Accordingly the appeal was withdrawn.

³ See Mayers v. N.Y. Cmty. Bancorp Inc., No. CV-03- 5837, 2005 WL 2105810.(E.D.N.Y. Aug. 31, 2005.)

The result is that the Social Security recipient often gives up on banking for fear of a future restraint. Not having a bank account is expensive - a cash checking place typically charges \$10.00 to cash a \$700 check. Not banking also increases the burden on the police and local social service agencies as paper checks and cash can be stolen.

Why Bank Restraints Involving Social Security Are Increasing

How prevalent is this problem? While there are no statistics, anecdotal evidence suggests it is quite common in New York. I get five to eight calls a week on the subject at SBLs. Other factors suggest the problem is huge. First, many Social Security recipients have credit card debt, having lost income when they became disabled. Second, more Social Security recipients today have bank accounts than in the past. This is because Congress made direct deposit mandatory in 1996 (although there is an opt-out provision.) As a result, 80% of Social Security recipients today have bank accounts.⁴ In New York, this translates into about 500,000 impoverished Social Security recipients who need access to their bank accounts to get their direct deposit Social Security payments.⁵

Third, the safe-harbor of bankruptcy was significantly reduced by the 2005 bankruptcy amendments. Personal bankruptcy filings dropped about 75% from over 2 million in 2005 to 590,000 in 2006.⁶ Consequently, many elderly and disabled Social Security recipients who would have availed themselves of bankruptcy in the past to avoid repeated bank freezes are unable to do so today.

Fourth, New York's debt collection laws are exceedingly powerful. Once a creditor has won a judgment in a New York court (having proven the debt is owed or winning because the debtor failed to appear), a creditor will issue information subpoenas with restraining notices on local banks commanding them to freeze any account involving the debtor. Unlike in other states, creditors with judgments in New York can issue these restraining notices directly from their offices without the cost of going to court. This makes searching for a debtor's bank account cheap and fail-proof as literally every bank in the state can be served to locate a debtor's account. For example, one creditor recently served restraining notices on 30 banks in New York in search of my client's account. These banks included such little known banks as "The Atlantic Bank of New York" "The Bank of Smithtown," "The First Niagra Bank," and "The Nassau Educators Federal Credit Union." Needless to say, the creditor found and restrained my client's account (which contained only Social Security by direct deposit.)

Debt collectors also have technology on their side. A 2000 amendment to New York law

⁴ See The Social Security Administration's *Trend In Direct Deposit Participation* (June 2001) (available at www.ssa.gov/deposit/GIS/data/Reports/DDTREND.htm).

⁵ These numbers are derived from the Social Security Administration's publications, *Fast Facts & Figures about Social Security*, (June 2003) available at http://www.ssa.gov/policy/docs/chartbooks/fast_facts/2003/ and *Trends In Direct Deposit Participation* (June 2001) (available at www.ssa.gov/deposit/GIS/data/Reports/DDTREND.htm).

⁶ Blair, "Insolvency Cases Plummet" *The New York Law Journal*, April 26, 2007.

allows “electronic” service of restraining notices and information subpoenas. CPLR 5222(g) and 5224(a) (4). Now, a collection firm need not drop-off hundreds of pieces of paper with banks requesting information on judgment debtors. Instead, a firm serves the banks with a CD-ROM disc containing the names and social security numbers of thousands of judgment debtors. For example, one small bank recently received a CD-Rom from a large collection firm containing information on 65,000 debtors. The bank ran this through its computers in 4 minutes, locating the accounts of over 100 debtors. This same CD was given to numerous banks who likewise froze the accounts of hundreds of debtors. Another large debt collector uses technology that allows bank matching of debtors names with bank accounts through the internet.

As a result of this technology, Social Security recipients can no longer hope that a restraint is a one time event. Today, issuing a restraining notice is so cheap that a creditor will try again in hopes that the debtor has won lotto, inherited money, returned to work, or commingled his account. Or the creditor will sell the judgment to a third party who will then restrain the account again. Accordingly, the problem of low income persons having their exempt Social Security restrained by creditors is huge and will not go away.

What Can Be Done To Protect Social Security Recipients?

Banks have all the technology they need to protect direct deposit Social Security payments. Each electronic deposit contains words and coding that identifies it as a Social Security payment. Thus, a bank employee or a computer can easily determine if an account contains only exempt, direct deposit Social Security payments when the bank is served a restraining notice. Most banks will not do this because New York law does not require this extra step. Moreover, many banks believe they will be held in contempt if they do not restrain the account, given language on the restraining notice and in the NY CPLR 5222(b).

Federal agencies could easily require banks to take this extra step - to not honor any restraining notice where an account contain only direct deposit. One bank, the New York Community Bank, already follows such a practice of ignoring restraints when the account contains only direct deposit Social Security.(Affidavit available upon request.) A number of banks, including Chase and Banco Popular, also protect such accounts.

Moreover, making banks take this extra step of looking at the account before restraining it is not burdensome. California and Connecticut already require banks to do this to protect direct deposit Social Security. Conn. Gen. Stat. § 52-367b(c)and Cal Code Civ Proc § 704.080. Many large banks, such as Bank of America, are thus taking this extra step for Social Security recipients in select states. They should do it for all the nation’s citizens.

Finally, it is very important that when an account contains non-exempt money, that the bank restrain only the non-exempt portion. As Mr. Taliaferro’s second restraint in March 2007 illustrates, having as little as \$25.00 in your account can trigger the loss of one’s entire Social Security check (in his case \$1508.) Bank’s have the technology to easily determine what money is exempt and not exempt. They just are not forced to do so. Meanwhile they enjoy all the fees triggered by the freeze.

Conclusion

Banks need to do the right thing to protect Social Security recipients such as Mr. Taliaferro from debt collectors. Without guidance from federal regulatory agencies, they will not do so. The Senate Finance Committee should make sure such guidance is given.

Thank you.

_____-s-_____
Johnson M. Tyler
Brooklyn, New York