

## Laura Rowley Money & Happiness

### Unholy Alliance Fleeces Social Security Recipients

By Laura Rowley

Thursday, November 15, 2007

Virginia grandmother Ruby Fauntleroy, 74, knew something was wrong when her rent payment bounced shortly after her Social Security check had been direct-deposited into her bank account.

Fauntleroy went to the bank, where a teller told her that the account was frozen following notice of a court judgment and garnishment order by Capital One. Fauntleroy had been trying to pay off this \$4,000 credit card debt for years, but dropped her monthly payment to \$100 after her husband died and her income declined. Capital One sued, and won a judgment.

"I was just numb, I couldn't believe this could happen," said Fauntleroy. "I told the bank, 'You know nobody is supposed to take a government check,' but they did. I couldn't sleep at night, I couldn't eat. I thought, why are they doing this to me when I was trying to pay [my debt]?"

#### **When Exempt Isn't**

Legal aid agencies across the country say they've been flooded with calls from seniors and disabled people whose accounts have been frozen by bill collectors. This is happening even though the federal government specifically prohibits the garnishment of exempt funds such as Social Security and veterans benefits.

In the worst cases, seniors go hungry or without medication because they have no access to funds -- in some cases, for months at a time. "People can really bumble around for months trying to get their accounts unfrozen because the procedures they have to follow are so Byzantine," says Claudia Wilner, attorney with the New York-based Neighborhood Economic Development Advocacy Project (NEDAP), which handles about 200 such cases a year.

In August, three senators asked the inspector general of the Social Security Administration to investigate the extent of the problem, querying the nation's largest

banks on how often the practice occurs. The Senate Finance Committee held hearings on the issue in September.

### **Slow to Respond**

The problem comes amid enormous growth in consumer debt, and changes in technology that make it easier and cheaper for creditors to seize bank accounts. Although banks can tell whether an account contains exempt funds before they issue a freeze, they argue that ignoring a restraining order would leave them in contempt of state court.

But even when both the creditor and the bank agree a mistake has been made, bureaucracy can leave seniors in limbo for weeks. Laurie Doran, staff attorney for South Jersey Legal Services, had a client who discovered the levy on her account when she went to buy medication. "They zapped both her savings and checking, and she didn't have access to any funds," says Doran. "She came over from the pharmacy in an absolute panic."

Although attorneys for both the creditor and the bank immediately agreed to lift the freeze, it couldn't be done because the levy officer -- a liaison between the court and the bank -- was unresponsive. It took two weeks to unravel, during which the elderly woman's health deteriorated.

### **Death by a Thousand Fees**

Moreover, some banks are making a profit off these account holders through exorbitant fees. Banks typically charge a non-refundable legal processing fee of \$100 to \$150 for the freeze itself. Then, when the consumer, unaware of the freeze, pays their bills, they can incur significant overdraft fees.

In one case, Chase Bank froze the checking account of a New York retiree -- whose only income was from Social Security -- following a \$920 judgment for an unpaid dental bill. The woman had \$929.54 in her account, but the dentist never got anything. "Chase Bank managed to grab the entire account," says her attorney, Jim Baker of the Northern Manhattan Improvement Project.

The 72-year-old wrote nine checks against the account without realizing it had been frozen; several of those checks were presented twice for payment. Chase charged \$30 each time. In addition, the bank was debiting 45 cents a month from her account for credit insurance. "Every time the first of month rolled by and Chase couldn't debit its 45 cents, they charged her another \$30," says Baker. In four months, the account was empty.

Even when a freeze is lifted and garnished funds are restored, banks often refuse to refund fees. "The banks say they have the right to charge fees because it's a deposit agreement," says Wilner. "They say they are not acting through the legal process, but through a contractual agreement, so the regulatory exemption doesn't apply to them."

### **Trolling for Delinquencies**

The problems are becoming more frequent because of the burgeoning debt collection industry. In 2005, \$110 billion in face-value debt was purchased by third-party debt buyers, 90 percent of it credit card receivables, according to the Association of Credit and Collection Professionals.

In New York City, the number of consumer debt cases filed in civil court has grown 300 percent in 5 years, to 320,000 cases in 2006, according to a new report from the Urban Justice Center. Ninety percent were brought by third-party debt buyers. Almost \$1 billion in claims were made against New York City residents, and creditors obtained judgments of nearly \$800 million, the center estimates.

Once a default judgment goes through, the creditor's attorney sends an electronic information subpoena and restraining notice, which has the same power as a court order. The cost is minimal. "The volume of collection activity is way up," says Baker. "Creditors used to have to have some reason for thinking someone had an account at a specific bank. Now they simply send out a blanket email to every bank in the tri-state area, and say, 'If so-and-so has an account, freeze it.'"

On the consumer side, the problem is compounded by direct deposit: This year, 85 percent of Social Security recipients received their payments electronically, up from 41.5 percent in 1985. Someone who encounters a freeze may have subsequent checks slip into the account before they're able to find their way through the legal maze.

### **Frozen and Refrozen**

Meanwhile, creditors who are rebuffed often turn around and file a new claim for the same debt. New Yorker Waverly Taliaferro, 70, worked for decades as a photographer before retiring in 2001. He and his wife lived off of his Social Security payment and her income. In 2003, when she was laid off, they fell behind on a credit card bill. Their account was frozen in 2006, which Taliaferro discovered on his way to the grocery store. Over the next 23 days, he says, he and his wife survived on a 10-pound bag of brown rice.

After his lawyer was able to remove the freeze, Taliaferro began receiving his check by mail, and paying \$23 to a check-cashing service to cash it. Six months later, his attorney

told him that Chase Bank had issued a policy not to freeze exempt funds, so Taliaferro opened an account -- and received a \$100 bonus from the bank for using direct deposit. The account was frozen 16 days later because it contained non-exempt funds -- what was left of the bonus money from Chase.

"Absolutely nothing will stop that debt buyer from trying to freeze it again," says Taliaferro's attorney, Johnson Tyler of South Brooklyn Legal Services. "When a credit card company sells off a debt, they don't sell it with a red flag that says, 'We tried to collect and she's on Social Security.' It's sold as part of a bundle of debt. We have cases where the debt buyer froze the account three times in a row on a client who is homeless and mentally impaired. A judge ordered them to stop and they still did it."

### **A Modern-Day Debtors' Prison?**

Consumer advocates say Congress should adopt federal legislation modeled after a California law that prohibits a restraint on the first \$2,500 of any account into which Social Security funds are directly deposited. "That would simplify things for the banks, and essentially effectuate the whole purpose of what Congress wanted to accomplish with exemption laws," says Tyler.

For her part, Fauntleroy says she's done with credit cards, although she still gets daily offers in the mail. "They keep trying, but I won't bite -- I even got one from Capital One," she says. "Either they're crazy or they think I am!"

Like Fauntleroy, many seniors try to make good on their debts, legal advocates say. "Many of our clients made payments for years until they couldn't do it anymore," says Patricia Duecy, a paralegal with Legal Services of Northern Virginia who worked on Fauntleroy's case. "Some of them did pay them off -- if you looked at what they actually charged, outside of late fees and interest.

"A long time ago the country made a decision that when a person is old or poor, they should have a subsistence income to pay for rent, food, and medicine," Duecy adds. "The money is supposed to be going to their basic needs and not going into the hands of debt collectors. If we can't protect the most vulnerable among us, what are we doing?"

---

This document is provided for "fair use" not-for-profit, educational purposes (and other related purposes). If you wish to use this copyrighted material for purposes of your own that go beyond "fair use," you must obtain permission from the copyright owner.