

The Debt Collector vs. The Widow; Viola Sue Kell thought her Social Security benefits were safe in the bank; She was wrong

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Fyffe, Ala. -- Heart surgery halted Viola Sue Kell's work sewing carpets in a rug mill in 2001. It was the end of 40 years of cleaning motel rooms, restaurant jobs, "just hard stuff," says Mrs. Kell, a 64-year-old widow. She applied for Social Security disability, and her monthly \$827 benefit now is her only income.

But when Mrs. Kell tried to pay her mortgage and electric bills in 2004, her checks bounced. Every cent of the Social Security check, which went straight to her bank each month, had been taken by a debt collector that had garnished her bank account.

Federal law says creditors can't take Social Security and Veteran's benefits to pay debts. Yet the practice is widespread. There is no established process for enforcing the federal prohibition.

When banks receive a garnishment order, their standard response is to freeze the customer's account. Banks say it's not their job to check whether accounts contain cash from exempt sources. Collectors also don't treat it as their job. So the burden falls on Social Security recipients, typically elderly or disabled, who have suddenly lost access to their bank accounts and have no idea what to do.

In 2003, a debt collector decided Mrs. Kell in Alabama owed \$125 on a three-year-old hospital bill. It obtained a court judgment and sent a garnishment order to her bank. The bank froze her account, which contained \$679, all from Social Security. "I was scared to death," Mrs. Kell says. "I didn't have any way of getting any money."

At a loss, she looked in the yellow pages for a lawyer. "I'm not very good with things when it comes to law. My husband took care of all that," she says. She found a legal-aid office 60 miles away from her rural home and drove over the mountain with her bank statements and Social Security papers.

What Mrs. Kell didn't know was that account holders can file a claim with a debt collector to have any funds that came from Social Security or Veteran's benefits exempted. But federal law doesn't say who should tell them this. Even Social Security's Web site doesn't.

"The Social Security Administration's responsibility for protecting benefits from legal process ends when the beneficiary is paid," said a spokeswoman. She said if benefits are taken "as part of a legal process," beneficiaries can cite the exemption "as a defense against such actions."

Legal Services Alabama helped Mrs. Kell file an exemption claim, and her bank, First Federal in Fort Payne, Ala., released her account. The bank said it had frozen it because it must comply with court orders. "It's not a bank's place to raise an exemption claim for a customer," said a First Federal lawyer. "It would be overwhelming."

The garnishment process can be rewarding for banks. When they restrain an account, they collect a range of fees -- for imposing the freeze, for the resulting bounced checks, or for short-term loans to prevent bounced checks. If the account contains Social Security, banks commonly collect these fees and their loan repayment out of those exempt funds. Banks argue that the ban on collecting debts out of Social Security benefits doesn't apply to them.

Worsening the problem, paradoxically, is direct deposit of benefit checks. This is meant to make benefits more secure. It means "you can rest assured your money is safe," says the Social Security Web site. Direct deposit

became mandatory in 1999 unless beneficiaries opt out, and more than 80% of recipients of regular Social Security use it, as do a majority of disability recipients.

But direct deposit has had an unintended result: an infrastructure that makes it cheaper and easier for collectors to pursue elderly or disabled subjects of old debts. These people can be hard for collectors to find, sometimes because they've moved to retirement areas. But debt collectors, knowing that millions of retirees are having money sent straight to banks, can electronically ask a large bank if a given individual has an account with the bank anywhere in the U.S. If a direct-deposit Social Security account turns up, the collector garnishes it.

Mrs. Kell decided to get her Social Security check by mail, and had to drive 12 miles to cash the check at a Wal-Mart and buy money orders to pay bills. (Later, after her lawyer spoke to the bank, she resumed direct deposit.) She gets food donations from First Baptist Church and free garden seeds from a Methodist group. "I'm pretty well fixed for food," Mrs. Kell says. Once she's done paying off her debts, she says, she hopes to save enough money to visit her husband's grave in Georgia.

While collectors can take many of the steps to garnish an account electronically, it's up to seniors and the disabled to file physical papers to prove their benefits are exempt. As a practical matter, if they don't get help from a lawyer, they may not know their funds are exempt. And depending on the state they live in, if they don't claim an exemption in time -- generally between 10 and 30 days -- benefits that were garnished can be lost for good.

Dolores and Robert Weise moved to a mobile home in Hernando, Fla., from New Windsor, N.Y., three years ago, looking for a cheaper place to live. Robert, a 70-year-old former paper salesman, was fighting colon cancer, and the medical bills "put us down the drain," says Mrs. Weise, 65. She opened an account at a Florida branch of Wachovia Corp., which received their Social Security by direct deposit.

In July 2005, Mrs. Weise tried to withdraw \$20 at an ATM for chemotherapy co-payments. But her account was frozen. The bank had received a garnishment order.

Mrs. Weise didn't know Social Security was exempt and the bank didn't tell her, according to an account from her that is supported by correspondence among Mrs. Weise, the bank and the debt collector. The bank told her to take up the matter with the collector, a New York firm called Mel Harris & Associates.

The collector also didn't tell her her funds were exempt, according to Mrs. Weise. But she says it told her that if she authorized her bank to wire it \$3,109 for an old credit-card debt, Harris would lift the garnishment order.

Collectors obtain such orders by suing debtors, usually in small-claims court. These clogged courts issue the orders routinely if the named debtor doesn't show up or fight the request, for any reason. Sometimes, the reason is that a summons was sent to an old address. In the Weises' case, the garnishment order shows the summons was sent to an outdated address in New York state.

At her bank, Mrs. Weise says, "I was on my knees. It was like our last dollar. I didn't even have money to buy gas to get home." Distraught, she authorized the bank to send Mel Harris the money. The bank then unfroze her remaining funds, minus a \$108 processing fee.

Mel Harris declined to comment. Wachovia said it couldn't comment on a customer because of privacy rules but is "committed to protecting the safety of our customers' funds while complying with state and federal law." It said state codes provide instructions for customers to claim their exemptions. "We are required to honor valid garnishment orders and are simply following the rules and regulations set forth in federal and state laws," said a bank spokesman.

However, the garnishment order for the Weises' account stated: "Funds defined as 'exempt' or otherwise excluded under applicable law must not be restrained under this notice." The Wachovia spokesman said banks "are not in a position to determine the character of funds at any given point in the account."

Garnishment orders often originate with big debt buyers that acquire large portfolios of old debts written off by credit-card firms, retailers and so forth. In the Weises' case, a debt buyer had purchased a batch of old credit-card debts and hired Mel Harris to try to collect them. Debt buyers and collectors obtain millions of garnishment orders each year.

A trade group representing debt buyers said they have "a positive role in the economy, returning to creditors a portion of their investment, which benefits consumers in the form of more credit and lower interest rates." Barbara Sinsley, general counsel of the group, DBA International, added: "It isn't the intention of debt buyers to garnish exempt funds."

Legal-aid offices say they often get calls from frantic seniors wrestling with collectors who've frozen their Social Security money and won't let go. The offices say some collectors appear to automatically deny exemption claims and drag out the process until the oldsters give up or die.

Cloette Rice, 79, faced possible eviction from her nursing home in late 2002 after a collector garnished her bank account three times, seeking repayment of a department-store debt incurred before she had a stroke. A social worker at Ebenezer Ridges Care Center in Burnsville, Minn., repeatedly wheeled Ms. Rice to her office and put her on the speakerphone to the bank, collectors or Social Security. "She was just so completely stressed out about it," says the social worker, Kimberly Worrall.

A legal-aid lawyer filed repeated exemption claims over nine months with the collector, a law firm in Plymouth, Minn., called Messerli & Kramer P.C. The law firm said on more than one occasion that it hadn't received the paper work. It denied the exemption.

At a resulting court hearing, a judge, after a three-month delay, agreed Ms. Rice's funds were exempt and ordered Messerli & Kramer to return \$1,472 and pay Ms. Rice \$100 for disregarding her claims in bad faith. The law firm did so. But two days later, it filed a garnishment order again -- the fifth time it had done so.

"Mrs. Rice said this caused her more stress than having her stroke," said Kathleen Eveslage, of Southern Minnesota Regional Legal Services. "They basically made her last days hell." In November 2003, she died.

About a year later, Minnesota's attorney general sued Messerli & Kramer, alleging that it repeatedly garnishes accounts containing exempt funds and unlawfully denies exemption claims. Messerli & Kramer said it can't comment during the suit, pending in Dakota County district court.

"These people keep garnishing because they know many will just walk away, especially these poor little old ladies, who need their dollars when they get them," said another target of Messerli & Kramer, Thomas Bender. An 84-year-old disabled veteran of two wars, he uses a walker and a wheelchair, disabilities due partly to a back injury incurred while flying dive-bombing missions in Korea.

For a time, he once collected debts himself, for a credit union. Yet even he didn't know how to protect his Social Security. After his home-based travel-agent business folded in 2001, the Richfield, Minn., widower fell behind on car payments to Ford Motor Credit Co. He surrendered the car, but the creditor turned the remaining debt over to Messerli & Kramer, which demanded he pay a balance of \$5,757.

Mr. Bender offered to work out a repayment plan, but the collector got a default judgment against him and garnished his credit-union account, which contained his Social Security and his Veteran's benefits.

He sent an exemption claim, attaching a letter from the Social Security Administration. Messerli & Kramer rejected the claim, saying he had "failed to provide sufficient proof that the funds withheld are exempt."

In an attempt to protect his future checks, Mr. Bender stopped direct deposit. He then had to arrange, a week in advance, to have a bus service for the disabled take him to a bank to cash his check and pay bills. Even though he no longer had the car he'd bought, and although all of his income was exempt from creditors under

law, Mr. Bender was determined to pay off the car loan. He filed a bankruptcy petition that enabled him to set up a long repayment schedule, finally paying it off this month.

Many banks say it's too hard to keep track of whether money in accounts is exempt from debt collection. Yet some banks find it possible. Banco Popular says when it gets a garnishment order it looks at account deposits for the past 90 days and if all of them involved exempt funds, it rejects the order. If it finds a mixture of exempt and non-exempt funds, it advises the creditor of this, says the bank, which is based in Puerto Rico and has U.S. and Caribbean operations.

Consumer advocates say banks should be able to keep track because they have complex software that tracks all sorts of other things about accounts. And direct deposits bear electronic tags. One of the Weises' Social Security deposits appeared on their statement as "Automated Credit US Treasury 303 SOC SEC."

Each time banks freeze an account, they charge its holder a processing fee, typically \$100. More fees soon follow -- for bounced checks or for instant loans to prevent bouncing.

In 2005, a collector got a judgment against Marlene Butts, 72, a former toll-taker in New York, for \$920 of unpaid dental bills. Chase bank froze her account on Sept. 27. It contained \$929, mostly from Social Security.

The freeze caused a \$53.83 check Mrs. Butts wrote two days earlier to Time Warner Cable to bounce. Chase debited the frozen account a \$30 fee for that, reducing the balance to \$899.

In the next week, six more checks bounced -- including the Time Warner check again, which Chase resubmitted for payment even though it had frozen the account. Each of these brought another \$30 fee to Chase, which also collected \$125 for freezing the account.

Then came two tiny pre-authorized debits, for \$4.15 and for 95 cents. The freeze blocked both, and Chase charged a fee of \$30 for each. By Nov. 22, fees had consumed all of the Social Security funds deposited in Ms. Butts's checking account, which were supposed to be exempt from the debt collector anyway.

A spokesman for Chase, a unit of J.P. Morgan Chase & Co., said it couldn't comment on an individual depositor but that if the customer had told the bank about the situation, it could have helped resolve things.

Pennsylvania's Supreme Court recently issued a rule that barred banks from freezing accounts that contain only direct deposits of Social Security. In California, banks may not freeze the first \$2,425 of any individual's account that receives such checks, even if it also receives non-exempt funds.

Despite this law, Washington Mutual Inc. in November froze the account of Helen and Martin Yack, which received Social Security and contained just \$237. A debt collector was pursuing the Yacks, of Oroville, Calif., for unpaid medical bills dating from Mrs. Yack's pancreas surgery and her 74-year-old husband's treatment for prostate cancer and a heart attack.

"They just took every penny," said Mrs. Yack, 67. "We had no money for food for Thanksgiving. We had to eat what we could find."

Asked why it froze the account in view of California law, Washington Mutual said it couldn't comment on a customer's case. Its policy is to "comply fully with all state and federal laws governing garnishments, levies and legal process," said a spokesman, adding: "We do what we can to ensure that our customers understand their rights, but cannot act as their attorney or agent in applying for exemptions."

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