

NO.18-9192

In The
SUPREME COURT OF THE UNITED STATES
_____ Term, 2019

Michael Balice,
Petitioner

vs.

United States of America,
Respondent

**On Petition For Re-Hearing
Under Rule 44**

PETITION FOR RE-HEARING UNDER RULE 44

Michael Balice
Petitioner, sui juris, *en forma pauperis*
~70 Maple Ave.
Metuchen, NJ ~08840

July 9th, 2019

ISSUE PRESENTED

The district court lacked jurisdiction under Title 28 Section 2001(a) to order the petitioner's home and property sold at I.R.S. auction, because the court failed to first schedule and conduct the hearing that is required under Title 28 Section 2001(b), (in order for the district court to be able to lawfully take jurisdiction under 2001(a) to order the property sold). The hearing required under 2001(b) is required by the statute to ensure that the right of every defendant to *due process* in the federal courts is protected, accommodated, and honored by those courts within their adopted processes. Due process at law historically has included the right of every defendant to appear at least once before the court, at a hearing conducted in the court by the court, before the defendant's home and private property are ordered sold to enforce a judgment, without allowing any appearances in the court by the defendant, and without conducting any hearing in the court at any time during the four years of litigation of the case in the court.

LIST OF ALL PARTIES TO THE CASE

The complete list of original defendants in this action in the district court includes:

- 1) Michael Balice,
- 2) Marion Balice,
- 3) Rosewater Trust,
- 4) Investors Bank,
- 5) Amboy Bank,
- 6) Medical Care Management,
- 7) Richard Tiedemann,
- 8) Barclays Bank Delaware.

PETITION FOR RE-HEARING UNDER RULE 44

Petitioner timely submits this *Petition for Re-Hearing* under Rule 44 of the Rules of the Supreme Court of the United States of America in a final and desperate plea for *justice*, and for the *due process* at law that the Petitioner is entitled to by both constitutional and statutory law; of being allowed to attend at least one *hearing* in the federal courts before his home and property are sold to satisfy a *summary judgment*, after five years of litigation in the district court with the United States and after being denied the opportunity to submit any pleadings at all in the Circuit Court because the Petitioner was denied a briefing calendar in that court.

On October 16, 2017, district court Judge Kevin McNulty, in the district of New Jersey, *ordered* that the federal tax liens on the defendant's home at 70 Maple Avenue, Metuchen, New Jersey, hereinafter the "*Subject Property*", be foreclosed; - ordering that the *Subject Property* was to be sold pursuant to Title 28 USC §§ 2001 and 2002.

Title 28 U.S.C.

§ 2001. Sale of realty generally

(a) Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is located, or upon the premises or some parcel thereof located therein, as the court directs. Such sale shall be upon such terms and conditions as the court directs. ...

§ 2002. Notice of Sale of realty

A public sale of realty or interest therein under any order, judgment or decree of any court of the United States shall not be made without notice published once a week for at least four weeks prior to the sale in at least one newspaper regularly issued and of general circulation in the county, state, or judicial district of the United States wherein the realty is situated. ...

However, Title 28 U.S.C. § 2001, the statute that was invoked by the district court itself to **provide** the statutory authority to *control* the legal process by which the "*Subject Property*" was to be sold, specifically **requires** in Section 2001(b) that a "*hearing*" be conducted before the *Order* of the court to sell the *Subject Property*

is issued by the district court; and only after "*notice to all interested parties* [of the scheduled hearing] *shall be given*".

§ 2001. Sale of realty generally

...
(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, **the court may order the sale** of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

No such statutorily required *hearing* was ever held or conducted in this case as required under this statute; - to provide the *due process* at law necessary for the district court to lawfully take and hold jurisdiction under Section 2001 to *order* the *Subject Property* to be sold at IRS auction.

No *Hearing* was ever scheduled, held, *Noticed*, or conducted by the district court before it improperly issued the *Order* to sell the *Subject Property* without establishing the jurisdiction to do so by complying with the required process of the statutes, of conducting a *hearing* in the court.

"Federal courts are courts of limited jurisdiction. They possess only power authorized by Constitution and statute, which is **not to be** expanded by judicial decree. It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction." *Kokkenen V. Guardian Life ins. Co. of America*, 511 US 375 (1994)

This is no new principle of constitutional law. **The right to a prior hearing has long been recognized** by this Court **under the Fourteenth and Fifth Amendments**. Although the Court has held that due process tolerates variances in the *form* of a hearing "appropriate to the nature of the case," *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 313, and "depending upon

the importance of the interests involved and the nature of the subsequent proceedings [if any]," *Boddie v. Connecticut*, 401 U.S. 371, 378, the Court has traditionally insisted that, **whatever its form, opportunity for that hearing must be provided** before the deprivation at issue takes effect. *E. g.*, *Bell v. Burson*, 402 U.S. 535, 542; *Wisconsin v. Constantineau*, 400 U.S. 433, 437; *Goldberg v. Kelly*, 397 U.S. 254; *Armstrong v. Manzo*, 380 U.S., at 551; *Mullane v. Central Hanover Tr. Co.*, *supra*, at 313; *Opp Cotton Mills v. Administrator*, 312 U.S. 126, 152-153; *United States v. Illinois Central R. Co.*, 291 U.S. 457, 463; *Londoner v. City & County of Denver*, 210 U.S. 373, 385-386. See *In re Ruffalo*, 390 U.S. 544, 550-551. "That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest, except for *extraordinaire*. (*Hagar v. Reclamation Dist.*, 111 U.S. 701, 708 (1884))

"Due process of law in each particular case means such an exercise of the powers of the government **as the settled maxims of law permit** and sanction, and under such safeguards for the protection of individual rights as those maxims proscribe for the class of cases to which the one in question belongs. A course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity there must be a tribunal **competent by its constitution** - that is, by the law of its creation - **to pass upon the subject-matter of the suit**; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the state, or his voluntary appearance. *Pennoyer v. Neff*, 95 US 733, 24 L.Ed. 565. Due process of law implies **the right of the person affected thereby to be present before the tribunal** that pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; **to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact** which bears on the question of right in the matter involved. **If any question of fact, or liability be conclusively presumed against him, this is not due process of law.**

An orderly proceeding wherein a person is served with notice, actual or constructive, and **has an opportunity to be heard and to enforce and protect his rights** before a court **having power to hear and determine the case**. *Kazubowski v. Kazubowski*, 45 Ill.2d 405, 259 N.E.2d 282, 190. Phrase means that no person shall be deprived of life, liberty, property or of any right granted him by statute, unless matter involved first shall have been adjudicated against him upon trial conducted according to established rules regulating judicial proceedings, and **it forbids condemnation without a hearing**. *Pettit v. Penn*, La.App., 180 So.2d 66, 69. The concept of "due process of law" as it is embodied in Fifth Amendment demands that

a law shall not be unreasonable, arbitrary, or capricious and that the means selected shall have a reasonable and substantial relation to the object being sought. *U.S. v. Smith*, D.C.Iowa, 249 F.Supp. 515, 516. Fundamental requisite of "due process" is **the opportunity to be heard**, to be aware that a matter is pending, to make an informed choice whether to acquiesce or contest, and to **assert before the appropriate decision-making body the reasons for such choice**. *Trinity Episcopal Corp. v. Romney*, D.C.N.Y., 387 F.Supp. 1044, 1084. Aside from all else "due process" means **fundamental fairness and substantial justice**. *Vaughn v. State*, 3 Tenn.Crim.App. 54, 456 S.W.2d 879, 883." Black's Law Dictionary pg. 500 (6th ed. 1990); accord, *U.S. Department of Agriculture v. Murry*, 413 U.S. 508 [93 S.Ct. 2832, 37 L.Ed.2d 767] (1973); *Stanley v. Illinois*, 405 U.S. 645 [92 S.Ct. 1208, 31 L.Ed.2d 551] (1972)

Additionally, the statutory authority of the district court that it invoked under Title 28 U.S.C. Section 2001 was further mis-used by the district court to order the federal Marshal's service to *invade* the property and home of the defendants and forcibly remove them by *eviction* from their home and property, **without that specific authority to act** (order evictions) being conferred by the statute, *i.e.*: no authority to order an eviction of an American family from their home is granted or authorized by this statute.

"Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly **in contravention of it**, their judgments and orders are regarded as nullities; they are not voidable, but simply void, and this even prior to reversal." *Williamson v. Berry*, 8 HOW. 945, 540 12 L.Ed. 1170, 1189 (1850)

There is **no** authority provided by the statute, **nor** any jurisdiction of the district court that is granted or created under any part or sub-part of Title 28 U.S.C. Section 2001, to allow the court to *order* an *eviction* of people from any property, even that property which is to be sold at auction to enforce a federal court ordered judgment. Evictions from property located within a State are of course a matter of State law unless the property is already owned or legally controlled by the United States (by purchase or "acceptance of responsibility", or by being property that is within a territory or possession, a federal fort, Washington, D.C., other federal lands and or buildings, etc.; *i.e.*: within the territorial jurisdiction of the United States).

The district court has clearly acted under *color of law* and in violation of the statutes by **mis-using** the statute (28 USC § 2001) to **exceed the limited** and

specific power actually granted within it, to *Order* a “*sale*” of a property **after** conducting a *hearing*. Additionally, the statute does **not** authorize the court to order an “*eviction*”, and a sale **order cannot** be lawfully issued before a *hearing* is conducted in the district court (with the required *Notices* of the hearing being given to all parties with an interest in the property) as required under Section 2001(b), and the other statutes arguably applicable, cited hereinbelow.

Petitioner further asserts that there are other statutes of Title 28, that are applicable to the “*Enforcement of judgments*” under the Title as well, and that also support the understanding that a *hearing* must be conducted **before** the sale *order* is issued *by the court*, and only after the required *Notice* is given to all interested parties. This *Notice* and *hearing* requirements are an essential and indispensable part of providing *due process* in the federal courts.

Title 28 U.S.C. Section 3202 plainly states:

§ 3202. Enforcement of judgments

(a) ENFORCEMENT REMEDIES. — A judgment may be enforced by any of the remedies set forth in this subchapter. A court may issue other writs pursuant to section 1651 of title 28, United States Code, as necessary to support such remedies; subject to rule 81(b) of the Federal Rules of Civil Procedure.

(b) NOTICE.— On the commencement by the United States of an action or proceeding under this subchapter to obtain a remedy, the counsel for the United States shall prepare, and clerk of the court shall issue, a notice in substantially the following form:

“NOTICE

“You are hereby notified that this [property] is being taken by the United States Government, which has a court judgment in [case docket number and jurisdiction of court] of \$[amount] for [reason of debt].

“In addition, you are hereby notified that there are exemptions under the law which may protect some of this property from being taken by the United States Government if [name of judgment debtor] can show that the exemptions apply. Below is a summary of the major exemptions which apply in most situations in the State of [State where property is located]:

“[A statement summarizing in plain and understandable English the election available with respect to such State under section 3014 and the types of property that may be exempted under each of the alternatives specified in paragraphs (1) and (2) of section 3014(a) and a statement that

different property may be so exempted with respect to the State in which the debtor resides.]

“If you are [name of judgment debtor], you have a right to ask the court to return your property to you if you think the property the Government is taking qualifies under one of the above exemptions [For a default judgment:] or if you think you do not owe the money to the United States Government that it says you do.

“If you want a hearing, you must notify the court within 20 days after you receive this notice. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. If you wish, you may use this notice to request the hearing by checking the box below and mailing this notice to the court clerk. You must also send a copy of your request to the Government at [address], so the Government will know you want a hearing. The hearing will take place within 5 days after the clerk receives your request, if you ask for it to take place that quickly, or as soon after that as possible.

“At the hearing you may explain to the judge why you believe the property the Government has taken is exempt [For a default judgment:] or why you think you do not owe the money to the Government. [For a writ of execution:] If you do not request a hearing within 20 days of receiving this notice, your [property] may be sold at public auction and the payment used toward the money you owe the Government.

“If you think you live outside the Federal judicial district in which the court is located, you may request, not later than 20 days after your [1]receive this notice, that this proceeding to take your property be transferred by the court to the Federal judicial district in which you reside. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at [address]. You must also send a copy of your request to the Government at [address], so the Government will know you want the proceeding to be transferred.

“Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information.”

And Title 28 USC § 3202(c) specifically requires that the *Notice* be served on all parties with an interest in the property.

28 U.S. Code § 3202. Enforcement of judgments

...
(c)SERVICE.— A copy of the notice and a copy of the application for granting a remedy under this subchapter shall be served by counsel for the United

States on the judgment debtor against whom such remedy is sought and on each person whom the United States, after diligent inquiry, has reasonable cause to believe has an interest in property to which the remedy is directed.

No such legal service of any *Notice* or *process*, or opportunity for hearing, was ever given or made on any defendant named on the Title and Deed documents for the *Subject Property*, or on any defendant named in the *Complaint*.

Furthermore, the *hearing* requirement is repeated again under Title 28 USC § 3202(d), where there is also supposed to be an opportunity for a *hearing*, under the judgment enforcement process provided for under the Title. However, as no “*Notice*” was ever issued under subsection (c), all of the defendants and *parties of interest* in this action were deprived of the *due process* opportunity to seek a hearing under subsection (d) - *Hearing*.

§ 3202. Enforcement of judgments

...

(d) HEARING. — By requesting, within 20 days after receiving the notice described in section 3202(b), the court to hold a hearing, the judgment debtor may move to quash the order granting such remedy. The court that issued such order shall hold a hearing on such motion as soon as practicable, or, if so requested by the judgment debtor, within 5 days after receiving the request or as soon thereafter as possible. The issues at such hearing shall be limited—

- (1) to the probable validity of any claim of exemption by the judgment debtor;
- (2) to compliance with any statutory requirement for the issuance of the post-judgment remedy granted; and
- (3) if the judgment is by default and only to the extent that the Constitution or another law of the United States provides a right to a hearing on the issue, to—
 - (A) the probable validity of the claim for the debt which is merged in the judgment; and
 - (B) the existence of good cause for setting aside such judgment.

This subparagraph shall not be construed to afford the judgment debtor the right to more than one such hearing except to the extent that the Constitution or another law of the United States provides a right to more than one such hearing.

Title 28 USC § 3202(e), reemphasizes the point that there is supposed to be an opportunity for a hearing under this judgment enforcement *process* under Title 28 authorities, and that the sale of the property is **prohibited** “*before such hearing*”.

§ 3202. Enforcement of judgments

...

(e) **SALE OF PROPERTY.**— The property of a judgment debtor which is subject to sale to satisfy the judgment may be sold by judicial sale, pursuant to sections 2001, 2002, and 2004 or by execution sale pursuant to section 3203(g). If a hearing is requested pursuant to subsection (d), property with respect to which the request relates **shall not be sold before such hearing.**

NO required “*hearing*” has ever been conducted in the district court in this case. The district court’s *Order* for the sale of the *Subject Property* **violates** the statutes and is **not** supported by them.

The requirement for judicial and legal *due process* in the courts is secured by the Fourth, Fifth, Sixth and Seventh Amendments to the Constitution of the United States of America and the corresponding provisions in Bills of Rights included in most state constitutions. The Fourth Amendment controls pre-judgment searches and seizures (there must be a complaint under oath and a probable cause hearing before a magistrate in a court of competent jurisdiction; the exception is a criminal admiralty or maritime warrant, which can be issued by a court clerk), and the Fifth controls conversion: “***No person shall be deprived of life, liberty or property without due process of law***”.

In *Miranda v. United States*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966), former Chief Justice Earle Warren penned the following: “As courts have been presented with the need to enforce constitutional rights, they have found means of doing so. ... Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them.”

The inventory of *due process* rights secured by the Fifth, Sixth and Seventh Amendments mandate judicial *due process*. The legislative and/or executive branches cannot unilaterally or jointly exclude the judicial in order to deprive the American people of life, liberty or property, and the judiciary cannot act lawfully without a **complete** statutory basis that authorizes all of the acts undertaken.

The requirements of ***due process at Law***, with respect to private property, have long been recognized as requiring that all parties with an interest in a property be provided an opportunity to meaningfully participate in legal actions affecting Title to the property, through *Notice*, legal *service*, *service of process*, opportunity to appear before the court at least once, and opportunity to be heard by the court at

least once at a *hearing* conducted in the court, before any judicial action is taken against the property.

For more than a century the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." *Baldwin v. Hale*, 1 Wall. 223, 233. See *Windsor v. McVeigh*, 93 U.S. 274; *Hovey v. Elliott*, 167 U.S. 409; *Grannis v. Ordean*, 234 U.S. 385. It is equally fundamental that the right to notice and an opportunity to be heard "must be granted at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552

The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment -- to minimize substantively unfair or mistaken deprivations of property, ... See *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552

The requirement of notice and an opportunity to be heard raises no impenetrable barrier to the taking of a person's possessions. But the fair process of decision-making that it guarantees works, by itself, to protect against arbitrary deprivation of property. For when a person has an opportunity to speak up in his own defense, and when the State must listen to what he has to say, substantively unfair and simply mistaken deprivations of property interests can be prevented. It has long been recognized that "fairness can rarely be obtained by secret, one-sided determination of facts decisive of rights. ... [And] no better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it." *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 170-172 (Frankfurter, J., concurring)

If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented. At a later hearing, an individual's possessions can be returned to him if they were unfairly or mistakenly taken in the first place. Damages may even be awarded to him for the wrongful deprivation. But no later hearing and no damage award can undo the fact that the arbitrary taking that was subject to the right of procedural due process has already occurred. "*This Court has not ... embraced the general proposition that a wrong may be done if it can be undone.*" *Stanley v. Illinois*, 405 U.S. 645, 647.

This requirement to provide *due process* is **not** a new principle of constitutional law. The right to a prior hearing has long been recognized by this Court under the Fourteenth and Fifth Amendments. Although the Court has held that due process tolerates variances in the *form* of a hearing "appropriate to the nature of the case," *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 313, and "depending upon the importance of the interests involved and the nature of the subsequent proceedings [if any]," *Boddie v. Connecticut*, 401 U.S. 371, 378, the Court has traditionally insisted that, whatever its form, opportunity for that hearing must be provided before the deprivation at issue takes effect. *E. g.*, *Bell v. Burson*, 402 U.S. 535, 542; *Wisconsin v. Constantineau*, 400 U.S. 433, 437; *Goldberg v. Kelly*, 397 U.S. 254; *Armstrong v. Manzo*, 380 U.S., at 551; *Mullane v. Central Hanover Tr. Co.*, *supra*, at 313; *Opp Cotton Mills v. Administrator*, 312 U.S. 126, 152-153; *United States v. Illinois Central R. Co.*, 291 U.S. 457, 463; *Londoner v. City & County of Denver*, 210 U.S. 373, 385-386. See *In re Ruffalo*, 390 U.S. 544, 550-551. "That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest, except for extraordinary.

"Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. **If any question of fact or liability be conclusively presumed against him, this is not due process of law.**" Black's Law Dictionary 500 (6th ed. 1990); accord, *U.S. Department of Agriculture v. Murry*, 413 U.S. 508 [93 S.Ct. 2832, 37 L.Ed.2d 767] (1973); *Stanley v. Illinois*, 405 U.S. 645 [92 S.Ct. 1208, 31 L.Ed.2d 551] (1972)

"Due process of law is following the forms of law appropriate to the case and just to the parties affected. It must be pursued in the ordinary mode prescribed by law; it must be adapted to the end to be attained; and whenever necessary to the protection of the parties, it must give them **an opportunity to be heard** respecting the justice of the judgment sought. *Hagar v. Reclamation Dist.*, 111 U.S. 701, 708 (1884).

"Where a court failed to observe safeguards, it amounts to denial of due process of law, **court is deprived of juris.**" *Merritt v. Hunter*, C.A. Kansas 170 F2d 739

Therefore, as the Petitioner has been wrongfully **denied** the opportunity to a **hearing** that he is entitled to by law, under both statute and Constitution, **before** the *Order of court* is issued to sell the *Subject Property*, the Petitioner respectfully seeks honest judicial review in this case to **set aside or declare void** the *order* of the district court to sell the *Subject Property* for **lack** of jurisdiction of the court under Title 28 U.S.C. Section 2001(a), for want of the legal *due process* of a *hearing* that is required for *due process* to be provided under both the U.S. Constitution and Title 28 U.S.C. Section 2001(b).

"Judgment is a "void judgment" if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a **manner inconsistent with due process.**" *Klugh v. U.S.*, D.C.S.C., 610 F. Supp. 892, 901.

The Federal Rules of Civil Procedure, Rule 60(b) plainly states:

Rule 60. Relief from a Judgment or Order

...

(b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING.

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake**, inadvertence, surprise, or excusable neglect;
- (2)** newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3)** fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;**
- (5)** the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.**

....

Under the hereinabove cites of the Federal Rules of Civil Procedure, the statutes of the United States Code, and the controlling precedents of the U.S. Supreme Court, an *Order of the district court* to sell *Subject Property* cannot be *lawfully issued* or enforced by the federal courts under 28 U.S.C. § 2001 without providing an

opportunity for, or conducting, a *hearing* as **required** under Title 28 U.S.C. § 2001(b).

Pursuant to FRCP Rule 60(b)(4) the district court, or any federal court, "*may relieve a party or its legal representative from a final judgment, Order, or proceeding*" if, inter alia, "***the judgment is void.***" Fed.R.Civ.P. 60(b)(4). "***Generally, a judgment is void under Rule 60(b)(4) if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law.***" Burke, 252 F.3d at 1263.

"A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well-established law that a void order can be challenged in any court", *Old Wayne Mut. L. Assoc. v. McDonough*, 204 U. S. 8, 27 S. Ct. 236 (1907).

Plaintiff makes this *pleading* because the issuance of an *Order* by the district court ordering the sale of the *Subject Property* without first conducting any *hearing* or allowing an *appearance* by the Petitioner in the court, is a violation of *due process* under Title 28 USC Section 2001(b), the Constitution (and the other cited statutes as well); is **not** supported in law, and was absolutely entirely ***improper*** for the district court to *order*, and was a clear violation of the Constitutional rights of the Petitioner, who after five years of litigation in the federal district court, with **no pleadings or briefs at all allowed in the Third Circuit Court of Appeals in the appeal**, still has not been allowed even a single appearance in any federal court, and has never been given a *hearing*.

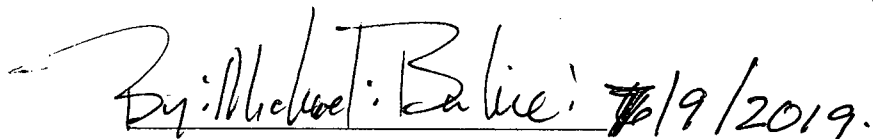
A court may not render a judgment which transcends the limits of its authority, and a judgment is void if it is beyond the powers granted to the court by the law of its organization, even where the court has jurisdiction over the parties and the subject matter. Thus, if a court is authorized by statute to entertain jurisdiction in a particular case only, and undertakes to exercise the jurisdiction conferred in a case to which the statute has no application, the judgment rendered is void. The lack of statutory authority to make particular order or a judgment is akin to lack of subject matter jurisdiction and is subject to collateral attack. 46 Am. Jur. 2d, Judgments § 25, pp. 388-89.

So, we conclude, as we did in the prior case, that, although these suits may sometimes so present questions arising under the Constitution or laws of the

United States that the Federal courts will have jurisdiction, yet the mere fact that a suit is an adverse suit authorized by the statutes of Congress is not in and of itself sufficient to vest jurisdiction in the federal courts. *Shoshone Mining Co. v. Rutter*, 177 U.S. 505, 513 (1900).

Petitioner now prays this honorable court will **GRANT** this *Petition for Re-hearing* so that this honorable Supreme Court may review, address, and correct the errors of the lower district court that were made when it issued its *Order* to sell the home and *Subject Property* of the Petitioner-defendant in violation of Title 28 U.S.C. Section 2001(b), without ever conducting any *hearing* at all in the court, in order to provide Petitioner with the constitutional *due process* he is entitled to by law, of a *hearing* in the court **before** any property is *ordered* sold under that statute, by the court.

Respectfully submitted,


Michael Balice, sui juris, *en forma pauperis*
~70 Maple Ave.
Metuchen, N.J. ~ 08840

APPENDIX

Order of the district court appealed

**Additional material
from this filing is
available in the
Clerk's Office.**