

ADVISORY NOTICE

Subject: Vacating Restraining Notice

Class: AN

Category: GP-60.1

Date: Oct. 16, 2000


In a recent application for an Order to Show Cause in a civil action in which a judgment had been entered and a Restraining Notice served, the Judgment Debtor included a paragraph which read as follows:

IT IS FURTHER ORDERED THAT, pending hearing and determination of this motion, the restraint placed on the Defendant's bank account number _____, at the _____ Bank is vacated and any and all acts of the Plaintiff, its attorneys, agents or assigns and any Marshal of the City of New York to issue or execute a restraint or to take any other action against Defendant to enforce any judgment in connection with the underlying proceeding be and hereby are stayed.

The Order as proposed would vacate and lift the restraint on the bank and would allow the Judgment Debtor to remove the money on deposit. In most cases the relief requested above should not be granted. Under normal circumstances the restrained money should be kept as security for the payment of the Judgment, pending a decision on the Motion and, in the event the Motion is denied, acceleration of the return date is an option if the Movant is *in extremis*.

Accordingly, a paragraph of the sort indicated in italics above, inserted in an application for an Order to Show Cause, should be well considered before it is *So Ordered*, and should be stricken, unless there is a compelling reason for its inclusion.

10/16/00
Dated


Administrative Judge