

**Matter of 321 Henderson Receivables Origination,
LLC v Abruzzo**

2007 NY Slip Op 33888(U)

December 4, 2007

Supreme Court, Kings County

Docket Number: 0030928/2007

Judge: James G. Starkey

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS, CIVIL TERM, PART 6
HON. JAMES G. STARKEY

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In the Matter of the Petition of

321 HENDERSON RECEIVABLES
ORIGINATION, LLC,

Dated: December 4, 2007.

Petitioner,

Index No.: 30928/2007

- against -

SCOTTI ABRUZZO, WILLIAM PENN LIFE
INSURANCE COMPANY OF NEW YORK and
CONTINENTAL INSURANCE COMPANY,

DECISION

As Interested Persons Pursuant to GOL § 5-1701(c),

Respondents.

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APPEARANCES OF COUNSEL

For the Petitioner(s):

LUM, DRASCO & POSITAN, LLC
325 Broadway
New York, New York 10007

For the Respondent(s):

SCOTTI ABRUZZO, Pro Se

No Appearance by remaining respondents

Caption: 321 Henderson vs. Abruzzo, et al.

Index No.: 30928/2007

By Order to Show Cause dated August 20, 2007, Petitioner 321 Henderson Receivables Origination, LLC, seek judicial approval of an assignment of a portion of Respondent Scotti Abruzzo's structured settlement annuity with co-respondents pursuant to General Obligations Law 5-1701, *et seq.*, more commonly known as "The Structured Settlement Protection Act" (SSPA). Co-respondents have not opposed the relief requested, and respondent Scotti Abruzzo consents to the application.

The petitioners appeared in Part 6 of this Court for oral argument on September 19, 2007, and decision was reserved.

FACTS AND PROCEDURAL BACKGROUND

Respondent Scotti Abruzzo is the payee of a structured settlement annuity issued by co-respondents pursuant to an Infant's Compromise Order dated April 23, 1986.¹ According to the Order annexed to the petition as an exhibit, Mr. Abruzzo received the sum of \$25,000.00 upon his attainment of age 18; \$25,000.00 upon his attainment of age 19; \$25,000.00 upon his attainment of age 20; \$25,000.00 upon his attainment of age 21; and \$50,000.00 upon his attainment of his 25th birthday. Further, Mr. Abruzzo is due the following guaranteed annuity payments from co-respondents: \$100,000.00 upon his attainment of age 30 on September 2, 2009; \$200,000.00 upon his attainment of age 35; \$350,000.00 upon his attainment of age 40; and \$550,000.00 upon his attainment of age 45. All payments appear to be in lump sum form.

¹ Respondent Scotti Abruzzo was an infant plaintiff in a personal injury action commenced by his father, Donny Abruzzo, against Associated Securities and Hyman J. Banash under index number 184/1985 in the Supreme Court, Kings County. The Infant's Compromise Order fully settled that matter.

Mr. Abruzzo is presently 27 years of age, unemployed and receiving \$19,000.00 per year in disability payments. He is single, has no dependent children, and his only asset is the structured settlement annuity. Mr. Abruzzo further states that due to his situation, he requires immediate cash to use as a down payment for the purchase of a home in the State of Connecticut and to pay off approximately \$4,300.00 in accumulated credit card debt. No mention is made as to the \$150,00.00 previously received by him pursuant to the structured settlement annuity.

In order to obtain an immediate cash infusion, Mr. Abruzzo entered into an assignment agreement with petitioner 321 Henderson Receivables Origination, LLC. Mr. Abruzzo desires to assign the sum of \$50,000.00 from the lump sum payment of \$100,000.00 due on September 2, 2009 to the petitioner.

LAW AND APPLICATION

The primary purpose of the SSPA is to protect the recipients of long-term structured settlements from being victimized by companies aggressively seeking the acquisition of their rights to guaranteed structured settlement payments. See *321 Henderson v. Martinez*, 11 Misc.3d 892, 816 N.Y.S.2d 298 (Sup Ct NY Cty 2006); *In Re Settlement Capital Corp. (Ballos)*, 1 Misc.3d 446, 769 N.Y.S.2d 817 (Sup Ct Qns Cty 2003). To effectuate this purpose, the Legislature created procedural requirements that potential structured settlement transferees must follow before courts review the substantive merits of the proposed assignment. See *GOL § 5-1703*; *In the matter of Settlement Capital Corp. ("Y")*, 194 Misc.2d 711, 756 N.Y.S.2d 728 (Rensselaer Cty). Once the procedural requirements are met, the court shall substantively review the application and make express findings in accordance with *GOL § 5-1706*.

A review of the application indicates that it has been served timely pursuant to GOL §5-1705(c), and that all “interested parties” as defined by GOL §5-1701(f) appear to have been served. Further, it appears that all required disclosure pursuant to GOL §5-1703 has been provided to Mr. Abruzzo at least ten days prior to the date he signed the transfer agreement. Copies of these documents have been annexed to the application in accordance with GOL §1705(d). Further – and pursuant to GOL § 5-1706(c), (d) and (e) – the following has occurred: (1) Mr. Abruzzo has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has availed himself of same,² (2) the transfer does not contravene any applicable statute or order of any court or other government authority, and (3) it is written in plain language and is in literal compliance with GOL § 5-702. Therefore, the application is procedurally correct under the statute. See *GOL § 5-1706(a)*.

The court is required to make express findings that “the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependants; and whether the transaction, including the discount rate used to determine the gross advance amount and the fees and expenses used to determine the net advance amount, are fair and reasonable.” *GOL § 5-1706(b)*. However there is no requirement that the court find that an applicant is suffering from a hardship to approve the transfer of structured settlement payments. This is a two pronged test to be applied in evaluating the parties’ agreement. See *In Re Settlement Corp. (Ballos)*, supra at 461.

² Mr. Abruzzo retained the firm of Reitz and Chesley to review the transaction on his behalf. A letter from Stephen R. Chesley, Esq., is annexed to the petition as exhibit “B”. This letter merely identifies Mr. Abruzzo as the seller and that he is proceeding of his own free will. The letter, however, does not offer an opinion or suggested course of action beneficial to the seller as one would expect from retained counsel.

The best interests determination involves a broad consideration of the facts and the circumstances of the payee, in light of the payee's age, mental capacity, maturity level, ability to show sufficient income that is independent of the payments sought for transfer, capacity to provide for the payee's dependents, and the stated purposes for the transfer request. See *In Re Settlement Corp. (Ballos)*, supra at 454-55.

In this case, the payee is 27 years of age, with minimal income other than the structured settlement. The petition does not indicate or reference payee's mental capacity or maturity level. However, the petition indicates that payee received the sum of \$150,000.00 pursuant to the structured settlement over the past nine years, and since the payee does not claim an interest stream from said money, the court infers that it has been spent. The payee has no dependents, nor does he state his present living arrangements. Further, payee's request for \$30,000.00 as a down payment to purchase a home out of state is not persuasive. Specifically, while respondent desires to place a contractual down payment upon a home, it is doubtful that respondent would qualify for a mortgage given his unemployed status, nominal annual disability income and the current mortgage credit crisis. Considering the "paternalistic" purpose of the statute, the court finds that it will not be in the best interests of payee to permit this transaction. See *Mtr. of 321 Henderson*, 13 Misc.3d 526, 531, 819 N.Y.S.2d 826 (Erie Coun. 2006).

Apart from the foregoing – and turning to the "fair and reasonable" prong – 321 Henderson Receivables Origination, LLC proposes to purchase a portion of payee's structured settlement that is presently worth \$44,092.40 for the net payout of \$34,300.00, or 77.79% of its present discounted value (and 66.9% of the aggregate amount of the payments of \$50,000.00 to be transferred). Although payee is not being charged legal fees, he is being charged \$1,200.00 in

expenses.³ No persuasive explanation is offered for a reduction of \$9,792.40, an arrangement overall that this court deems inappropriate given the guaranteed nature of the annuity payout and the minimal risk involved for petitioner 321 Henderson Receivables Origination, LLC. *See In Re Settlement Funding of N.Y. (Cunningham)*, 195 Misc.2d 721, 761 N.Y.S.2d 816 (Rensselaer Coun. 2003).

CONCLUSION

In light of the above, the proposed transfer does not meet either the “best interests” requirement or the “fair and reasonable” requirement under the statute. Therefore, the motion is denied and the petition dismissed. This constitutes the decision and order of the court.

Petitioner is directed to settle Order on notice.

J. S. C.

³ The \$1,200.00 charged as a “compliance and administrative fee” is not itemized.