

**Matter of Settlement Funding of N.Y. LLC v  
New York Life Ins. & Annuity Corp.**

2007 NY Slip Op 34129(U)

December 12, 2007

Supreme Court, Nassau County

Docket Number: 9507-07/

Judge: Karen Veronica Murphy

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Short Form Order

**SUPREME COURT - STATE OF NEW YORK  
TRIAL TERM, PART 25 NASSAU COUNTY**

**PRESENT:**

**Honorable Karen V. Murphy**  
**Justice of the Supreme Court**

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**In the Matter of the Petition of**

**SETTLEMENT FUNDING OF NEW YORK, LLC,  
for Judicial approval of Absolute Assignment and  
UCC Article 9 Security Agreement with Felix J. White  
a/k/a Felix White, pursuant  
to Article 5 Title 17 of the New York General  
Obligations Law,**

**Index No. 009507/07**

**Petitioner,**

**Motion Dated: 6/7/07  
Motion Submitted: 10/19/07  
Motion Sequence: 001**

**-against-**

**NEW YORK LIFE INSURANCE & ANNUITY  
CORPORATION AND NEW YORK LIFE  
INSURANCE COMPANY**

**Respondents.**

\_\_\_\_\_ X

The following papers read on this motion:

- Notice of Motion/Order to Show Cause.....X
- Answering Papers.....
- Reply.....
- Briefs: Plaintiff's/Petitioner's.....
- Defendant's/Respondent's.....

Petitioner, Settlement Funding of New York, LLC., brings this proceeding to seek approval of the transfer of structured settlement payment rights. Felix J. White, a/k/a Felix White, the payee, appeared at a hearing in support of the application. There was no opposition.

Felix White is the beneficiary of a Settlement Agreement arising from a personal

injury action. He seeks to transfer to Petitioner his right to receive nine (9) monthly payments, each in the amount of \$1,328.86, commencing on September 6, 2026 through and including May 6, 2027; 120 monthly payments, in the amount of \$1,368.73 commencing on June 6, 2027, increasing 3.00% every 12 payments through and including May 6, 2037; and one lump sum payment of \$70,000.00 due on or about June 6, 2025.

The Structured Settlement Protection Act (SSPA), General Obligations Law §5-1701 et seq. was enacted “to protect the recipients of long-term structured settlements from being victimized by companies aggressively seeking the acquisition of their rights.” (*Matter of Settlement Capital Corp. [Ballos]*, 1 Misc.3d 446, 769 N.Y.S.2d 817 (Sup. Ct., Queens Co., 2003); *Matter of 321 Henderson Receivables, L.P., [Martinez]*, 11 Misc.3d 892, 816 N.Y.S.2d 298 [Sup.Ct., N.Y.Co., 2006]). The Legislature was concerned about the allure of quick and easy cash. (Sponsor’s Mem. Bill Jacket L2002, Ch. 537). The Statute, as set forth in Title 17 of the GOL, requires Petitioners to follow a specific procedure and the Court to review the statutory criteria and make specific findings that the terms are fair and reasonable and that the transaction is ultimately in the best interests of the Payee. Courts should not be mere rubber stamps for the proposed sale of structured settlement payments. (*Matter of Settlement Capital Corp. [Ballos]*, *supra*; *Matter of 321 Henderson Receivables, L.P., [Martinez]*, *supra*). A review of reported opinions reflect that when the Court applies the statutory criteria most applications fail because inevitably the terms favor the factoring company rather than the Payee.

The Courts and Legislature are cognizant of the fact that an adult is generally capable of determining what is in their best interests. While that is true of their structured settlement payment rights as well, the Legislature has mandated that the Court examine the transaction to ascertain whether it is truly in the Payee’s best interest. The payment structure was presumed to be the best compensation for the Payee’s injuries at the time of the settlement. To overcome this presumptive validity, there must be a showing, by clear and convincing evidence of an unforeseen change in circumstances that would justify the sale of rights to future payments. (*Id.*)

The Court must find that the transfer is in the best interest of the Payee and whether the transaction, including the discount rate used to determine the gross advance amount and fees and expenses used to determine the net advanced amount is fair and reasonable. *GOL §5-1706(b)*.

Such findings are made on a case by case basis. (*Matter of Barr, 321 Receivables Henderson LLP v. Hartford Life Insurance Co.*, 4 Misc.3d 1021A, 798 N.Y.S.2d 342, 2004 N.Y. Slip Op. 50980(U) (Sup.Ct., Nassau Co., 2004); *Matter of Settlement Capital Corporation, [Ballos]*, *supra*). Developing case law and the intent of the statute suggest the Court consider (1) the Payee’s age, mental capacity, physical capacity, maturity level,

independent income and ability to support dependents; (2) purpose of the intended use of funds; (3) potential need for future medical treatment; (4) the financial acumen of the Payee; (5) whether Payee is in a hardship situation to the extent that he or she is in dire straits; (6) the ability of the Payee to appreciate financial consequences based on independent legal and financial advice; and (7) the timing of the application. (*Matter of Settlement Funding of N.Y., [Platt]*, 2 Misc.3d 872, 774 N.Y.S.2d 635 (Sup.Ct., Lewis Co., 2003); *Matter of Settlement of N.Y., [Ballos]*, *supra*; *Matter of Barr, 321 Henderson Receivables LLP v. Hartford Life Insurance Co., supra*).

According to Mr. White's testimony and affidavit in support of the proposed transfer, he is 21 years old and spoke with his personal injury attorney with regard to the terms of the proposed agreement. Mr. White is working part time, earning \$12.00 per hour for sixteen hours of work per week. He acknowledged that he is willing to transfer \$270,251.21 in exchange for \$5,300.76, so that he can "take care of his great grandmother". It is his hope that he will improve his standard of living.

Mr. White showed no insight into his financial future or how such a one sided exchange would have any significant positive impact on his or his family's well being. Indeed, the Infant Compromise Order of Justice Louise Gruner Gans, dated December 4, 2001, provided for the first payment to be made to Mr. White on June 6, 2003. Mr. White joined in an application to transfer lump sum and monthly payments on or about December 2, 2003, which was granted by Justice Stephen A. Bucaria on February 18, 2004. A second application was made on August 30, 2004, wherein, Mr. White advised the Court that he wished to establish a place of his own and needed to purchase furniture and other household necessities, as well as to pay off debt. That application was granted by order dated September 20, 2004. By notice of petition dated January 6, 200[5], Settlement Funding of New York, LLC, joined by Mr. White, again sought and was granted on March 28, 2005 an order approving the transfer of structured settlement payments. At that time, he indicated to the Court that he once again needed money to establish himself in an apartment, in that his grandmother was in better health and no longer needed his assistance. Mr. White is still residing with his grandmother.

The Courts have consistently declined to approve transfers in similar cases. Payee's plan to invest in recording equipment was not approved because the Court found that he would have to more than double his initial investment in order to break even, an event the Court did not consider likely. (*Matter of Settlement Funding of N.Y., [Cunningham]*, *supra*). Conclusory statements that the money was needed to improve familial living status, consolidate debt and provide funeral arrangements for his dying mother-in-law were insufficient to justify a transfer. (*Matter of Settlement Capitol Corp., [Ballos]*, *supra*). Payee's desire to pay cash for a used car, pay old debts, furnish his mobile home and open a savings account did not convince the Court that the proposed transfer was in the Payee's

best interest. (*Matter of Settlement Funding of N.Y., [Asproules], supra*). Conclusory statements, that Mr. DeMallie wanted to “take advantage of currently low mortgage rates” without sufficient clarification of his financial situation to support his choice, failed to satisfy the Court that the transaction was appropriate. (*Matter of 321 Henderson Receivables Ltd. Partnership, [DeMallie]*, 2 Misc.3d 463, 769 N.Y.S.2d 859 [Sup.Ct., Monroe Co., 2003]). Absent a pressing hardship or a level of understanding of the financial ramifications that an immediate sale of a future stream of payments in exchange for a short term windfall, the Court declined to approve the transfer. (*Matter of Settlement Capital Corp. [Yates]*, 12 Misc.3d 1198 (A), 824 N.Y.S.2d 770 [Sup.Ct., Kings Co., 2006]).

Turning now to the financial aspects of the proposed transfer, the aggregate amount of payments Mr. White seeks to transfer is \$270,251.21, discounted to a present value of \$76,953.27. The gross amount to be advanced is \$7,807.62. Mr. White is being charged \$200.00 for a “processing fee” and \$2,000.00 for legal fees, yielding a net amount of \$5,607.62 less any advances made to Payee, or claims satisfied against the amount payable to Payee. Such an arrangement clearly benefits the petitioner, much to the detriment of Mr. White.

A document entitled “New York Transfer Disclosure,” allegedly prepared and mailed on May 11, 2007 by an unknown party, states in pertinent part:

“D. The price quote from the original annuity issuer or, if such price quote is not readily available from the original annuity issuer, then a price quote from two other annuity issuers that reflects the current cost of purchasing a comparable annuity for the aggregate amount of payments to be transferred: \$204,014.71 and \$204,291.33.”

There was no proof that New York Life Insurance & Annuity Corporation refused to provide a price quote for an annuity, nor are the alleged price quotes from the other two annuity issuers provided. (See, *Matter of 321 Henderson Receivables [Fontana]*, 13 Misc.3d 1216A, 824 N.Y.S.2d 759 [Sup.Ct., Suffolk Co., 2006]). The Disclosure Statement is signed by Mr. White only. (See, *Matter of Settlement Funding of New York, LLC v. Utica Mutual Ins. Co.*, 16 Misc.3d 1124(A), 2007 N.Y. Slip Op. 51563(U) [Sup.Ct., Suffolk Co., 2007]). The annual discount rate compounded monthly, used to determine the gross advance amount, was set forth in the Disclosure Statement as 17.26%.

Under the circumstances, this Court does not find that the terms are fair and reasonable. Petitioner has failed to establish that the proposed transfer is in the Payee’s best interest.

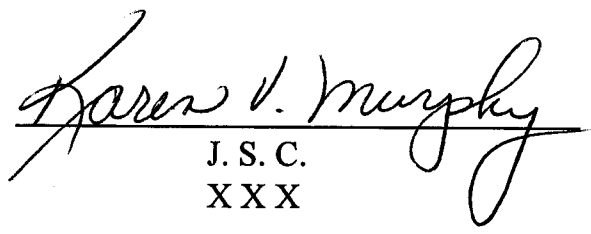
A copy of this Order shall be annexed to any future application by Mr. White to transfer his structured settlement funds.

This constitutes the Decision and Order of the Court.

Accordingly, it is hereby

**ORDERED AND ADJUDGED** that the Petition is in all respects, denied and the proceeding is dismissed.

Dated: December 12, 2007  
Mineola, N.Y.

  
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J. S. C.  
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