

**Matter of Settlement Funding of N.Y., LLC v
Allstate Assignment Co.**

2008 NY Slip Op 33205(U)

December 3, 2008

Supreme Court, Kings County

Docket Number: 22394/2008

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

SETTLEMENT FUNDING OF NEW YORK, LLC.,
for Judicial Approval of Absolute Assignment
and UCC Article 9 Security Agreement with
ERICA C. DORAN a/k/a ERICA DORAN,
pursuant to Article 5 Title 7 of the New York
General Obligations Law,

Dated: December 2, 2008.

Petitioner,

Index No.: 22394/2008

- against -

ALLSTATE ASSIGNMENT COMPANY
("Settlement Obligor") and
ALLSTATE LIFE INSURANCE COMPANY OF NY
("Annuity Issuer")

DECISION

Respondents.

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APPEARANCES OF COUNSEL

For the Petitioner(s): Settlement Funding of New York, LLC and Erica C. Doran

THE LAW OFFICES OF IAN M. CHAIKIN, P.L.L.C.
17 State Street, Suite 2000 - Box 169
New York, New York 10004

For the Respondent(s):

NO APPEARANCE

Settlement Funding vs. Allstate**Index No.: 22394/2008**

By Order to Show Cause dated September 4, 2008, Petitioners Settlement Funding of New York, LLC and Erica C. Doran seek judicial approval of an assignment of a portion of Petitioner Erica C. Doran's structured settlement annuity with respondents pursuant to General Obligations Law 5-1701, *et seq.*, more commonly known as "The Structured Settlement Protection Act" (SSPA). Respondents have not opposed the relief requested. This is petitioner's second application for a structured settlement assignment. See *In Re Petition of Settlement Funding of N.Y. (Doran)*, 2007 N.Y. Slip. Op. 71708 (U).

FACTS AND PROCEDURAL BACKGROUND

Petitioner Erica C. Doran is the payee of a structured settlement annuity issued by respondents and dated February 25, 2002.¹ According to the petition and affidavit in support of Ms. Doran, she is entitled to receive the following guaranteed annuity payments from respondents: a lump sum payment of \$25,000.00 on September 17, 2009; a lump sum payment of \$30,000.00 on September 17, 2014; and a lump sum payment of \$86,680.32 on September 17, 2019. Additionally, Ms. Doran received a lump sum payment of \$10,000.00 on June 1, 2006 and has been receiving the sum of \$200.00 per month since July 1, 2006 and shall continue to receive this sum per month until June 1, 2012.

Ms. Doran states that she is 23 years of age and has supported herself for the past five years. She presently resides with her mother and is employed as a housekeeper earning approximately \$600.00 per month. Since her last application, she has given birth to a baby boy,

¹ The moving papers do not explain the circumstances of Ms. Doran's entitlement to the structured settlement annuity.

Brandon Rodriguez. It is unknown if she is still receiving \$100.00 per month in food stamps, as indicated by her in her prior application. Ms. Doran further states that due to her current situation, she requires immediate cash to pay \$2,400.00 in past utility bills, \$4,000.00 in medical expenses related to the birth, \$1,700.00 in “much needed” baby supplies, \$1,000.00 for driving lessons, and approximately \$1,900.00 to repay an overpayment of her late father’s survivor benefits.

In order to obtain this immediate cash infusion, Ms. Doran entered into a new assignment agreement with petitioner Settlement Funding of New York, LLC, upon the following terms and conditions: from the lump sum payment of \$25,000.00 on September 17, 2009, \$5,000.00 would be assigned; from the lump sum payment of \$30,000.00 on September 17, 2014, \$5,000.00 would be assigned; and from the lump sum payment of \$86,680.32 on September 17, 2019, \$35,000.00 would be assigned. The total of the three assignments is \$45,000.00, for which Ms. Doran would receive \$11,261.97 after legal fees and administrative expenses.

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 Ms. Doran at least ten days prior to the date she signed this second 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) Ms. Doran has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has waived such advice in writing, (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)*. This is so even though reference to the prior application was not made in this one.

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)*. Thus, the test to be applied in evaluating the parties’ agreement is two pronged. See *In Re Settlement Corp. (Ballos)*, supra at 461. There is no requirement that the court find that an applicant is suffering from a hardship to approve the transfer of structured settlement payments.

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 23 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 \$10,000.00 in the year 2006 pursuant to the structured settlement, and since the payee does not claim an interest stream from said money, the court infers that this money has been spent. The payee has one dependent, and again no information has been provided concerning the putative father – or his ability to provide support pursuant to Family Law § 413 – which is income that would be independent of the payment sought for transfer, and an alternative source to provide for the payee's dependent, and a source of income to pay the claimed expenses associated with young Brandon's birth.

Lastly, the cost of raising a child is substantial and these costs grow along with the child. In the future, greater needs of the child may suffer if the payee is allowed to sell today a substantial benefit for a fraction of its value. Considering the “paternalistic” purpose of the statute, the court finds that it will not be in the best interests of payee or her dependent 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 – Settlement Funding of New York, LLC proposes to purchase a portion of payee's structured settlement that

is presently worth \$30,554.61 for the sum of \$13,461.97, or 44.05% of its present discounted value (and 29.91% of the aggregate amount of the payments of \$45,000.00 to be transferred). Although Payee declined to retain or consult with an independent attorney, accountant or other professional of her choice concerning this transaction, she is being charged legal fees of \$2,000.00 and \$200.00 in administrative expenses, which reduces the net sum from \$13,461.97 to \$11,261.97.² Finally, no persuasive explanation is offered for a reduction of \$17,092.64, an arrangement overall that this court deems inappropriate given the guaranteed nature of the annuity payout and the minimal risk involved for petitioner Settlement Funding of New York, 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.

J. S. C.

² This balance is subject to a further administrative charge by respondent in the amount of \$750.00.