

**Unum Life Ins.Co. of Am. v New York State Dept. of
Taxation & Fin.**

2010 NY Slip Op 33093(U)

October 25, 2010

Supreme Court, New York County

Docket Number: 102753/10

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. JUDITH J. GISCHE

PART 10

J.S.C.
Justice

Index Number : 102753/2010
UNUM LIFE INSURANCE COMPANY
vs.
NYS DEPT OF TAX AND FINANCE
SEQUENCE NUMBER : 001
ORDER TO PAY MONIES INTO COURT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____


Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

motion (s) and cross-motion(s)
decided in accordance with
the annexed decision/order
of even date.

OCT 25 2010

Dated: _____


HON. JUDITH J. GISCHE J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 10

-----x
UNUM LIFE INSURANCE COMPANY OF
AMERICA,

Plaintiff,

-against-

NEW YORK STATE DEPARTMENT OF
TAXATION AND FINANCE and ABRAHAM
MENDLOVIC,

Defendants.
-----x

Decision/Order

Index No.: 102753/10

Seq. No. : 001

Present:

Hon. Judith J. Gische
J.S.C.

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

Papers	Numbered
Pltf's n/m [discharge stakeholder] w/GB affid, exhs	1
Def NYDTF's x/m [3215] w/MG affirm, exhs	2

-----x

Upon the foregoing papers, the decision and order of the court is as follows:

This is an action to discharge a stakeholder. Plaintiff, Unum Life Insurance Company of America ("Unum"), moves to pay the value of four life insurance policies into Court. Defendants are the New York State Department of Taxation and Finance ("NYSDTF") and Abraham Mendlovic ("Mendlovic"). NYSDTF cross-moves for a default judgment against Mendlovic for the loan value of the insurance policies.

Though due proof of service has been filed, Mendlovic has not appeared. Plaintiff served the summons and complaint on a person of suitable age and discretion on March 8, 2010 and mailed a copy to the same address on March 9, 2010 (CPLR § 308[4]). Plaintiff has also complied with the additional notice requirements of CPLR §

3215[g][3][i] by mailing a copy of the summons and complaint to the defendant on July 7, 2010, more than twenty (20) days before seeking entry of a judgment on default.

Despite such notice and additional notice, Mendlovic has not appeared, answered the complaint, or moved. His time to do so has expired and this motion is brought within one year of his default.

NYSDTF has interposed an answer with a counterclaim against plaintiff declaring that the equity value of certain life insurance policies are subject to levy. Although plaintiff and Mendlovic were both served, they have not answered the counterclaim and their time to do so has expired.

Discussion

The following facts have been established by the plaintiff in the summons and complaint and through the sworn affidavit of George Berger, Esq., attorney for plaintiff:

Union issued four life insurance policies of which Mendlovic was the owner, to wit: (1) Policy No. LUL629375, Insured: Mendlovic, Owner: Mendlovic; (2) Policy No. LUL649321, Insured: Daughter, Owner: Mendlovic; (3) Policy No. LUL649322, Insured: Son, Owner: Mendlovic; (4) Policy No. LUL649323, Insured: Daughter, Owner: Mendlovic.

In 1991, Unum succeeded to the rights and obligations of Union Mutual Life Insurance Company ("Union"), thereby succeeding to the rights and obligations of the four policies. NYSDTF has docketed two warrants against Mendlovic for unpaid tax assessments and served a tax compliance levy on Unum on April 30, 2010, totaling \$5,013,398.63.

Plaintiff now seeks an order permitting plaintiff to pay into this Court the maximum loan values of four life insurance policies issued by its predecessor in interest, Union, to Mendlovic. Plaintiff also seeks to be discharged as a stakeholder and to dismiss NYSDTF's counterclaim.

NYSDTF cross-moves for a default judgment on the counterclaim against plaintiff and Mendlovic for the loan value of the insurance policies less plaintiff's allowable costs, expenses, and disbursements.

CPLR § 1006 (f) provides, as follows:

Discharge of stakeholder. After the time for all parties to plead has expired, the stakeholder may move for an order discharging him from liability in whole or in part to any party. The stakeholder shall submit proof by affidavit or otherwise of the allegations in his pleading. The court may grant the motion and require payment into court, delivery to a person designated by the court or retention to the credit of the action, of the subject matter of the action to be disposed of in accordance with further order or the judgment. An order under subdivision (g) shall not discharge the stakeholder from liability to any claimant until an order granted under this subdivision is complied with. The court shall impose such terms relating to payment of expenses, costs and disbursements as may be just and which may be charged against the subject matter of the action. If the court shall determine that a party is entitled to interest, in the absence of an agreement by the stakeholder as to the rate of interest, he shall be liable to such party for interest to the date of discharge at a rate no greater than the lowest discount rate of the Federal Reserve Bank of New York for discounts for, and advances to, member banks in effect from time to time during the period for which, as found by the court, interest should be paid.

Conclusion

The court finds that NYSDTF has valid unsatisfied tax levies against Mendlovic.

The court further finds that the net equity value of all four insurance policies (LUL629375; LUL649321; LUL649322; LUL649323) are assets that belong to Mendlovic and are subject to and may be applied in satisfaction of the levy. Although there was initially an issue as to whether two of four of the policies were exempt from the levy, Mendlovic has not come forward to dispute disbursement of the proceeds on any or all of the policies.


The court finds that plaintiff is to turnover the full equity value of the four insurance policies owned by Mendlovic to the NYSDTF, after deducting its own costs. NYSDTF shall apply the net proceeds, after deducting costs and disbursements, to reduce the amount of the levy held against Mendlovic. Upon turnover, Unum shall be fully discharged as a stakeholder.

The parties are to settle, on notice, an order consistent with this decision.

This constitutes the decision and order of the court.

Dated: New York, New York
October 25, 2010

So Ordered:



HON. JUDITH J. GISCHE, J.S.C.