

New York State Off. of Victim Servs. v Mims
2014 NY Slip Op 30035(U)
January 10, 2014
Supreme Court, Albany County
Docket Number: 5009-13
Judge: Joseph C. Teresi
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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

NEW YORK STATE OFFICE OF VICTIM SERVICES,
on behalf of Terence Washington, the crime victim, and all
other victims of respondent's crimes,

Petitioner,

DECISION and ORDER

RJI NO.: 01-13-111392

INDEX NO.: 5009-13

-against-

ROBERT MIMS, DIN #04-A-3271,

Respondent.

Albany County Supreme Court All Purpose Term, December 5, 2013
Assigned to Justice Joseph C. Teresi

APPEARANCES:

Hon. Eric T. Schneiderman
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Respondent, Pro Se
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TERESI, J.:

In 2006, Respondent was sentenced to twenty two years in state prison, as a second violent felony offender, based upon his Robbery in the First Degree conviction.

Respondent's mother, Gloria Mims Lindsay, has since passed away intestate and left Respondent as her sole heir. The attorney for Ms. Lindsay's Estate informed Petitioner of the Surrogate's Court proceeding, that the Estate's assets were liquidated, and that he currently holds such assets (\$226,936.03) "to which the [Respondent] is otherwise entitled."

Petitioner has now commenced this proceeding, pursuant to Executive Law §632-a, to obtain a preliminary injunction prohibiting the Estate from disbursing its assets to Respondent. Respondent opposes the petition and the Estate seeks its clarification. Because Petitioner demonstrated its entitlement to a preliminary injunction, as limited and clarified herein, the petition is granted.

As is well established, Petitioner is authorized to seek a preliminary injunction (Executive Law §632-a(6)(a); New York State Crime Victims Bd. ex rel. Hayes v Sookoo, 77 AD3d 1227 [3d Dept 2010]; New York State Crime Victims Bd. ex rel. Organek v Harris, 68 AD3d 1269 [3d Dept 2009]) and is required to demonstrate a "likelihood of success on the merits, irreparable harm in the absence of an injunction and a balancing of the equities in [its] favor." (Moore v Ruback's Grove Campers' Ass'n, Inc., 85 AD3d 1220, 1221 [3d Dept 2011]; Nobu Next Door, LLC v Fine Arts Hous., Inc., 4 NY3d 839 [2005]; New York State Crime Victims Bd. v Majid, 193 Misc2d 710 [Sup Ct, Albany County 2002]).

First, Petitioner demonstrated that one of Respondent's crime victims, Terrence Washington (hereinafter "Washington"), has a likelihood of success in his civil action against Respondent. "A criminal conviction is prima facie evidence... of its underlying facts in a subsequent civil action." (S.T. Grand, Inc. v City of New York, 32 NY2d 300, 303 [1973]; Dona v Levin, 263 AD2d 602 [3d Dept 1999]). Here, Respondent implicitly conceded that he robbed

Washington but alleges that the underlying facts (no physical injury and a monetary taking of \$600) do not give rise to civil damages that exceed the amount of his inheritance. Mr.

Washington, by affidavit, disputes the non-injury claim. While Washington's damages proof is not overwhelming, this Executive Law §632-a proceeding is not the proper forum for adjudicating the amount of his damages. Moreover, this record discloses a second victim of Respondent's crime, whose damages must also be considered. Considering the conviction and the existence of two victims, Petitioner demonstrated a likelihood of success in a civil action against Respondent.

Petitioner also established irreparable injury. On this record, Respondent's only significant asset appears to be his inheritance. With no injunction in place he could freely transfer the subject funds to prevent Washington, or his other crime victim, from collecting on their claims "before a court can determine whether he is required to pay [his inherited] money over to [his victims.]" (New York State Crime Victims Bd. v Majid, supra at 715).

Equity also favors injunctive relief. Executive Law §632-a's provisions were specifically drafted "to provide avenues to allow crime victims to be compensated for their losses." (New York State Crime Victims Bd. ex rel. Organek v Harris, supra 1271). The State has "a compelling interest in ensuring that victims of crime are compensated by those who harm them." (Simon & Schuster, Inc. v Members of New York State Crime Victims Bd., 502 US 105, 118 [1991]). Moreover, the legislative history of Executive Law §632-a recognized that the statute was passed to "ensure that convicted criminals who have or gain the ability to pay are held financially accountable to their victims." (Ciafone v Kenyatta, 27 AD3d 143, 147 [2d Dept 2005], quoting Governor's Mem approving L 2001, ch 62, 2001 NY Legis Ann, at 45).

Accordingly, Petitioner is granted a preliminary injunction, except to the extent set forth below.

Tuning to Respondent's opposition, he demonstrated that the equities entitle him to obtain an attorney with a portion of the enjoined funds. Respondent seeks to use a portion of his inheritance to secure legal representation in the civil actions his crime victims propose to commence against him. As this Court has previously stated in similar circumstances: "concerns for fundamental fairness and the integrity of the adversarial system" require Respondent's limited access to the enjoined funds for purposes of securing counsel. (New York State Crime Victims Board v George, Sup Ct, Albany County, October 17, 2006, Teresi, J., index No. 55-06).

Considering the relatively large amount of assets enjoined as compared to the extent of damages Petitioner demonstrated, the equities balance in favor of allowing Respondent to access a portion of his inheritance for legal counsel. As such, notwithstanding the instant preliminary injunction, Respondent is hereby granted leave to move this court to lift the preliminary injunction for purposes of obtaining legal counsel. Such motion must be supported by an affirmation of the attorney Respondent seeks to retain, which details their agreement, and a copy of the proposed retainer agreement.

In addition, contrary to Respondent's conclusory allegation, he made no evidentiary showing of his need to access the Estate's assets for medical expenses.

Lastly, to clarify, in accord with the Estate's attorney's request and Petitioner's acknowledgment, the injunction issued herein does not prohibit the Estate from paying its administrative expenses, reasonable attorneys fees, and justified claims. Such issues, along with the Debt Acknowledgment Form submitted by Respondent, are all subject to the jurisdiction of

Surrogate's Court. The preliminary injunction issued herein does not prohibit the Surrogate's Court from reviewing and approving any transaction of the Estate. Rather, it prevents only the Estate from disbursing its funds to Respondent.

Accordingly, the petition for a preliminary injunction is granted to the extent that it is hereby Ordered that:

The Estate of Gloria Mims Lindsay a/k/a Gloria M. Lindsay is hereby enjoined from distributing any of its assets to Respondent, except upon further Order of this Court, and

Respondent is hereby granted leave to move this Court to obtain counsel fees, as set forth above.

This Decision and Order is being returned to the attorneys for the Petitioner. A copy of this Decision and Order and all other original papers submitted on this motion are being delivered to the Albany County Clerk for filing. The signing of this Decision and Order shall not constitute entry or filing under CPLR §2220. Counsel is not relieved from the applicable provision of that section respecting filing, entry and notice of entry.

So Ordered.

Dated: January 10, 2014
Albany, New York


JOSEPH C. TERESI, J.S.C.

PAPERS CONSIDERED:

1. Order to Show Cause, dated September 11, 2013; Petition, dated September 10, 2013, with attached Exhibits A-C.
2. Answer and Return, dated October 11, 2013, with attached Exhibits A-F
3. Affirmation of Michael Singer, dated October 20, 2013, with attached Exhibit A.
4. Affidavit of Edward M. Scher, dated December 5, 2013, with attached Exhibits A-P; Affidavit of Terrence Washington, dated November 27, 2013; Petitioner's Reply, dated December 5, 2013; Affidavit of Eamonn Trainor, dated December 2, 2013, with attached Exhibit A.