

Matter of Lino-Guerrero v Aviva Assignment Corp.

2014 NY Slip Op 32019(U)

July 31, 2014

Supreme Court, New York County

Docket Number: 153181/2014

Judge: Peter H. Moulton

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

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

In the Matter of the Petition of
DIONISIA LINO-GUERRERO
for the Judicial Approval of Transfer of a Structured
Settlement Annuity Sale and Assignment Agreement
with ASH SQUARE FUNDING, LLC, pursuant to
Article 5 Title 17 of the of the New York General
Obligations Law (GOL § 5-1701 et seq.),
Petitioners

Index No. 153181/2014

-against-

AVIVA ASSIGNMENT CORPORATION and
AVIVA LIFE AND ANNUITY COMPANY OF
NEW YORK

Respondents

PETER H. MOULTON, J.S.C.:

Dionisia Lino-Guerrero seeks the transfer of certain structured payments due to her under a structured settlement agreement in accordance with 26 U.S.C. § 5891 et seq. and GOL § 5-1701 et seq. Under the terms of the structured settlement, Ms. Lino-Guerrero seeks to sell: monthly payments of \$150.00 commencing April 10, 2013 through and including May 10, 2031¹ as well as monthly payments of \$450.00 commencing June 10, 2031 through and including March 10, 2034, totaling \$48,000.00. If the transaction is approved, Ms. Lino-Guerrero will retain life-contingent monthly payments of \$450.00 each, beginning on April 10, 2034 for the remainder of her life.

Ms. Lino-Guerrero has already received \$14,000.00 from this transaction, because “[t]he

¹Ms. Lino-Guerrero previously received \$450.00 a month for her annuity payments currently running from April 10, 2013 through and including May 10, 2031. In 2011, she petitioned to sell \$300.00 out of the \$450.00 from those payments. Her application was granted by the Honorable Jane S. Solomon, J.S.C., under index number 104094/2011. As a result, she presently retains \$150.00 of the original \$450.00 annuity payment (\$450.00 - \$300.00 = \$150.00).

application was mistakenly believed to have been prepared and filed with the court, but in fact was not.” In the petition, the law firm that represents Ash Square Funding, LLC, Aviva Assignment Corporation and Aviva Life and Annuity Company of New York (who issued the annuity) states that Ash Square tendered the purchase price of \$14,000.00 to Ms. Lino-Guerrero based on representations made in a fraudulent court order approving the application. The petition further indicates that petitioner’s counsel explained that the fraud was perpetrated by a “rogue” paralegal in his office.

Accordingly, this Decision, Order and Judgment supersedes any prior Decisions, Orders and Judgments made with respect to the transaction at issue, including the aforementioned purported Order of Judge Cynthia S. Kern, dated August 1, 2013.

As amended by an attached e-mail dated July 15, 2014, the new purchase price for this transaction is \$21,000.00 (\$14,000.00 of which Ms. Lino-Guerrero has already received). In return, Ash Square Funding will receive an aggregate total of Ms. Lino-Guerrero’s monthly payments in the amount of \$150.00 (April 10, 2013 through and including May 10, 2031) as well as her monthly payments of \$450.00 (June 10, 2031 through and including March 10, 2034). Using the new discounted present value of \$37,906.76 as of June 11, 2014 (with an applicable federal rate of 1.00%), the net amount that Ms. Lino-Guerrero will receive in exchange for her future structured settlement payments represents 55.40% of the estimated current value of those payments. Originally, the transaction was the equivalent of interest payments to petitioner of 12.25% annually, but has since been amended to the equivalent of interest payments to petitioner of 8.96% annually (*see* attached e-mail dated July 15, 2014).

Ms. Lino-Guerrero’s affidavit reflects the following: She is 26 years old, single, and resides in New York City with her two minor children. At the time that Lino-Guerrero’s petition was filed,

she was enrolled as a student at Hunter College seeking a nursing degree. Her affidavit also stated her intent to use the money from the transfer of her future structured settlement payments to pay tuition towards her nursing degree. Ms. Lino-Guerrero also mentioned that she does not have any other assets or credit resources to finance her education without this transfer.

The court met with Ash Funding's counsel and Ms. Lino-Guerrero on the scheduled return date for the Order to Show Cause, June 11, 2014. On that date, Ms. Lino-Guerrero expounded on her desire to complete her education. Ms. Lino-Guerrero expressed that she is no longer pursuing a nursing degree, but is presently enrolled as a student at the Mandl school. Upon completion of 18-month program there, she hopes to be certified as a medical assistant. Ms. Lino-Guerrero further stated that beyond the educational needs outlined in her affidavit, she currently struggles to pay her monthly rent of \$650 and other household expenses. Ms. Lino-Guerrero articulated to the court that she earns approximately \$1,300 to \$1,500 a month working as a child care professional. She further stated that she receives food stamps to provide for her two children and has been unable to purchase much-needed furniture for her home.

The court finds that the transaction herein is both fair and reasonable and in the best interest of Ms. Lino-Guerrero. The additional \$7,000 that Ms. Lino-Guerrero will receive (which she was not expecting to receive), and the \$14,000 which she has already received, represent 55.40% of the estimated current value of the payments. Additionally, the annual discount rate of 8.96% is fair and reasonable, and is in Ms. Lino-Guerrero's best interest. Moreover, it would also not be in Ms. Lino-Guerrero's best interest for the court to disapprove this transaction, when one considers that Ms. Lino-Guerrero has already received \$14,000 and might be required to return that amount or have it offset against future payments. Nonetheless, Ms. Lino-Guerrero should spend the additional money that she is receiving here wisely since the only remaining payments that she will be entitled to

following the court's approval of this transaction are monthly payments of \$450.00 commencing in 2034 for the remainder of her life. As such, Ms. Lino-Guerrero should take heed of the fact that any future applications may not be approved, and is cautioned against reliance on her ability to sell the remaining portions of her structured settlement payments.²

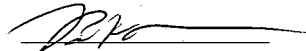
It is hereby

ADJUDGED that the petition is granted; and an Order is signed simultaneously herewith.

This constitutes the Decision and Judgment of the Court.

Dated: July 31, 2014

ENTER:



J.S.C.

HON. PETER H. MOULTON

²This transaction is being approved as in the best interests of Dionisia Lino-Guerrero. Aviva Assignment Corporation and/or Aviva Life and Annuity Company of New York have agreed to waive any servicing requirement in connection with this transaction. (See attached e-mail dated July 15, 2014). Servicing arrangements are of concern to the court. These arrangements are sometimes required by annuity companies, who do not want to "split" payments when only a portion of the structure is sold. Rather, the company purchasing a portion of the structured payments is sent the entire amount and remits the portion not sold back to the person selling the structured payments. Although the court has only found one case discussing this problematic issue, it remains concerned about the status of the unsold serviced portions if for example, the purchasing company declares bankruptcy. Other concerns include delay in payments and the accountability or responsiveness of the servicer. Accordingly, this court does not condone servicing arrangements.