

Matter of Aspire Fund, Inc. v GE Capital Assignment Corp.

2020 NY Slip Op 30379(U)

February 10, 2020

Supreme Court, Kings County

Docket Number: 525846/19

Judge: Debra Silber

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : PART 9

_____ X

In the Matter of the Petition of

ASPIRE FUND, INC.

DECISION / ORDER

Petitioner,

Index No. 525846/19

-against-

Motion Seq. No. 1
Cal. No. 2

GE CAPITAL ASSIGNMENT CORP. (Settlement
Obligor), GENWORTH LIFE INSURANCE COMPANY
(Annuity Issuer) and IRENE BOONE-CROWDER,

Date Submitted: 2/6/20

Respondent.

_____ X

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this petition to transfer a structured settlement.

Papers	NYSCEF Doc.
Order to Show Cause, Petition and Exhibits Annexed.....	<u>1-13</u>
Answering Affidavits	_____
Other: _____	_____

Upon the foregoing cited papers, the Decision/Order on this application is as follows:

By this Order to Show Cause and Petition, and Amended Verified Petition, petitioner Aspire Fund, Inc., a corporation due to "Inc." in its name (but which describes itself in the agreement in Exhibit A to the petition as "A California Limited Liability Company"), seeks court approval to buy a structured settlement income stream from Ms. Irene Crowder-Boone, named incorrectly in the caption and papers as Irene Boone-Crowder. Ms. Crowder-Boone is 60 years old (as she testified to and as stated in the

annuity documents, although the papers in this application incorrectly say she is 49) and lives in Brooklyn, New York. The payments sought to be assigned are not due to be paid to her until January 1, 2022, and she wants to assign \$575 per month, which may be all or part of her monthly annuity payments as explained below, from that date to December 1, 2040, eighteen years (228 months) later. None of these payments are guaranteed if she passes away before they are paid out. This is the reason petitioner gives for first offering Ms. Crowder-Boone \$36,100 then lowering it to \$28,000 in exchange for approximately \$131,000 in payments. Petitioner states that the cost of an annuity in today's dollars to generate the payments Ms. Crowder-Boone wants to sell would be \$93,760. To be clear, the first petition offers her \$36,100, while the amount in the amended petition is \$28,000, but orally in court counsel for petitioner re-instated the offer of \$36,100.00.

The structured settlement at issue was apparently entered into in 1996 following a lawsuit brought by Ms. Crowder-Boone related to an automobile accident. The index number for the underlying matter is not provided, nor are the settlement or the annuity documents. It apparently provided for the purchase of an annuity, with twenty years of guaranteed payments of \$1,675 per month starting on July 10, 1996. Thus, payments after that date are not guaranteed.

The petition references two prior court orders from courts in New York which approved Ms. Crowder-Boone's previous applications to assign payments from her annuity, dated in 2007 and 2013. From these orders and the papers annexed, it is learned that Ms. Crowder-Boone has four grown children, and the youngest is around 25 years of age. She obtained custody of her niece in 2006, and that child is now 19 years of age. It is not known if she has been receiving monthly payments from the

kinship foster care program or from Social Security or from a different benefit program for this child, who was removed from her parents and placed with Ms. Crowder-Boone. She testified in court that her niece was still living with her. In any event, Ms. Crowder Boone is not eligible for Social Security as yet. In 2007, in Index No. 34372/2007, she assigned eighty-four monthly payments of \$550, for the period July 10, 2009 to June 10, 2016, to Settlement Funding of New York, LLC, which were guaranteed payments. That assignment expired on June 10, 2016, which returned the full monthly payments to Mr. Crowder-Boone. However, before the assignment expired, under Index No. 20863/13, an assignment to Peachtree Settlement Funding, LLC was approved on March 14, 2014 by another Justice of this court, which order assigned \$1,100 of the \$1,675.00 monthly payments from July 10, 2016, the first month that the full payments would have been restored, for twenty years, or 240 months, until June 10, 2036. Thus, starting on July 10, 2016, when the assignment to the first vectoring company ended, the assignment to the second one started, and Ms. Crowder-Boone's payments went down from \$1,125.00 (\$1,675 - \$550) to \$575 (\$1675-1,100).

Now, Ms. Crowder-Boone is seeking to obtain approval of an agreement to collect her \$575 per month until January 1, 2022, when she will be 62 and eligible for Social Security, and then, starting on that date, assign her entire payment of \$575 per month so she will receive nothing from the annuity until July 10, 2036, when the assignment to Peachtree will expire, and, unless she also assigns those payments before they become due, which are also contingent on her being alive, she will then start collecting \$1,100 per month from the annuity when she is 78 years old.

Applicable Law

The SSPA (Structured Settlement Protection Act) was enacted as a result of concern that structured settlement payees are especially prone to being victimized and quickly dissipating their awards. (*Matter of Settlement Funding of N.Y.*, 195 Misc 2d 721, 722 [Sup Ct, Rensselaer County 2003]). "The SSPA protects payees from being taken advantage of by businesses seeking to acquire the payee's structured settlement payment rights" and discourages such transfers by requiring special proceedings seeking judicial approval of the transfer. (Id., General Obligations Law §§ 5-1705 and 5-1706). A proposed transfer of a portion of a payee's structured settlement for less than half its present discounted value was found not to be in the payee's "best interest", as required by the Structured Settlement Protection Act (SSPA). (Id., General Obligations Law §5-1706(b)). The payee's willingness to transfer the settlement "has no bearing on the court's determination of whether the interest rate paid by the transferee is 'fair and reasonable' within the meaning of the Structured Settlement Protection Act, (SSPA)." (Id.)

New York General Obligations Law §5-1706 provides that the transfer must be in the best interest of the payee, the transaction must be fair and reasonable, and the payee must have been advised in writing to seek independent professional advice regarding the transfer and has either received such advice, or knowingly waived such advice in writing.

The Court must independently determine, in its discretion, whether "the transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents, 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*" (emphasis added) (*Matter of Settlement Funding of N.Y.*, 195 Misc 2d at 723 citing General Obligations Law §5-1706[b]). "This is a two-pronged test to be applied in evaluating the parties' agreement." (*Matter of 321 Henderson Receivables Origination, LLC v Lugo*, 23 Misc 3d 1138 [A] 2009 NY Slip Op 51189[U] Sup Ct, Kings County).

This best interests' determination, at the court's discretion, involves consideration of several facts and circumstances concerning the payee, including the payee's age, mental capacity, maturity level, "ability to show sufficient income that is independent of the payments sought for transfer," and ability to provide for payee's dependents (*Matter of 321 Henderson Receivables Origination, LLC v Lugo, supra*). "The best interest prong should be assessed on a case by case basis giving specific consideration to such factors as the payee's age; mental and physical capacity, maturity level; ability to show sufficient income that is independent of the payments sought for transfer; capacity to provide for the welfare and support of the payee's dependents; the need for medical treatment; the stated purpose for the transfer; and the demonstrated ability of the payee to appreciate the financial terms and consequences of the proposed transfer based upon independent legal and financial advice." (*Whitney v LM Property*, NYLJ June 24, 2011; citing *Matter of Settlement Capital Corp.*, [Ballos], 1 Misc 3d 446, 445 [Sup Ct, Queens County]). The "best interest" consideration is separate and independent of the consideration of whether the transfer is "fair and reasonable" (*Matter of Settlement Funding of N.Y, supra*). For example, a payee who desperately needed cash to obtain "life sustaining medical treatment for a loved one" in the face of having no other alternative means of raising money would serve a payee's best interest in the face of a "life and death emergency" (Id).

"The 'best interest' standard under the SSPA requires a case by case analysis to determine whether the proposed transfer of structured settlement payments, which were designed to preserve the injured person's long-term financial security, will provide needed financial rescue without jeopardizing or irreparably impairing financial security afforded to the payee and his or her dependents by the periodic payments." (*Matter of Settlement Capital Corp.*, [Ballos] 1 Misc 3d at 455). An explanation as to why the payee has an immediate need for the transfer of funds, or lump sum, is taken into consideration. (*Whitney, supra, citing Matter of Settlement Capital Corp.*, 194 Misc 2d 711).

In one decision, a payee who had not "enjoyed the benefits of wise and unbiased counsel in the management of her financial affairs" and waived her right to consult with an independent professional, confirmed the court's impression that the payee did not fully appreciate the consequences of her transfer (*Whitney v LM Property, supra*).

Discussion

The court has determined that the proposed transfer does meet the "best interest" requirement, and the "fair and reasonable requirement" under the SSPA. Petitioner is not impaired or mentally disabled and is entitled to do with her funds as she sees fit. Caring for a teen is expensive. None of the payments are guaranteed, thus the petitioner will bear the risk of the payments terminating before they have recouped the amount paid out to Ms. Crowder-Boone.

Therefore, the first petition is granted and the petitioner is directed to submit a proposed order accompanied by a second amended petition which withdraws the first amended petition along with the back-up documents for the proposed purchase price of

\$36,100, which also reflects the correct name of the assignor, Irene Crowder-Boone, and if necessary, the correct name of the petitioner ("Inc." or "LLC". The papers submitted in connection with the Amended Petition reflects the lower purchase price, while the higher one was offered on the record in court.

Any future application by any company seeking to purchase the structured settlement payments due to Irene Crowder-Boone must be made returnable to the undersigned and not to any other court or justice.

The foregoing constitutes the decision of this court. Submit Order.

Dated: February 10, 2020

ENTER:



Hon. Debra Silber, J.S.C.

**Hon. Debra Silber
Justice Supreme Court**