

Gabrieli v City of New York
2020 NY Slip Op 34413(U)
December 14, 2020
Supreme Court, Richmond County
Docket Number: 152211/2019
Judge: Thomas P. Aliotta
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At a Trial Term Part of the
Supreme Court of the State of
New York, County of
Richmond, at the Courthouse
located at 18 ~~Richmond~~ ^{26 Central Ave}
~~Terrace~~, Staten Island, New
York 10301, on the 14 day
of December 2020

PRESENT: HON. THOMAS P. ALIOTTA, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X
PATRICIA GABRIELI, as administrator of the ESTATE OF
CARLOS GABRIELI, deceased, and PATRICIA GABRIELI,
individually,

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF DESIGN AND CONSTRUCTION,
NEW YORK CITY DEPARTMENT OF
TRANSPORTATION and NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Defendants.
-----X

COMPROMISE ORDER

Index No.: 152211/2019

A petition having been filed by PATRICIA GABRIELI, Individually and as Administrator
of THE ESTATE OF CARLOS GABRIELI, deceased, duly verified on July 21, 2020, praying that
a compromise order be issued herein and;

NOW upon the Notice of Motion and Affirmation of S. Joseph Donahue, of BLOCK
O'TOOLE & MURPHY, LLP., attorneys for petitioner, dated August 7, 2020, and Supplemental
Affirmation of S. Joseph Donahue, dated August 13, 2020, it is hereby:

ORDERED, that the Administrator PATRICIA GABRIELI be and is authorized and empowered to compromise and settle all claims relating to the Estate of CARLOS GABRIELI, decedent, as against Defendants THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF DESIGN AND CONSTRUCTION, NEW YORK CITY DEPARTMENT OF TRANSPORTATION and NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION, for up-front cash and future periodic payments at a present cost in the total sum of Ten Million Five Hundred Thousand Dollars (\$10,500,000.00), consisting of up-front cash of Eight Million Five Hundred Thousand Dollars (\$8,500,000.00) and the sum of Two Million Dollars (\$2,000,000.00) representing the cost of the purchase of structured settlement annuities to provide for the future periodic payments as set forth herein; and it is further

ORDERED, that PATRICIA GABRIELI, as Administrator of the ESTATE OF CARLOS GABRIELI, be and is hereby authorized and permitted to execute and deliver a Structured Settlement General Release, Qualified Assignments, General Release, Stipulation of Discontinuance and Hold Harmless Agreement to the Defendants, together with any and all papers necessary to effectuate the settlement herein; and it is further

ORDERED, that Defendants, and/or their insurance carrier, Zurich American Insurance Company, be authorized, permitted and are hereby directed to pay future periodic payments and up-front cash at a present cost in the sum of \$10,500,000.00 for all claims for personal physical injury and wrongful death of the ESTATE OF CARLOS GABRIELI; and it is further

ORDERED, that the settlement provided herein is deemed adequate and in the best interest of the ESTATE OF CARLOS GABRIELI; and it is further

ORDERED, that the structured settlement provided herein is deemed adequate and in the best interest of the distributee of the decedent CARLOS GABRIELI; and it is further

ORDERED, that pursuant to agreement of the parties, the funding for all annuities shall be paid on or before August 10, 2020 by Defendants and/or their insurance carrier, Zurich American Insurance Company; and it is further

ORDERED, that the Defendants and/or their insurance company, Zurich American Insurance Company, shall, as set forth above, within twenty-one (21) days of receipt of a copy of this Order, along with the Structured Settlement General Release, Qualified Assignments, General Release, Stipulation of Discontinuance and Hold Harmless Agreement executed by Plaintiff, pay the sum of Eight Million Five Hundred Thousand Dollars (\$8,500,000.00) representing the up-front cash portion of the settlement sum to Block O'Toole & Murphy, L.L.P. which shall be deposited by Block O'Toole & Murphy, L.L.P. in an interest bearing escrow account for the benefit of the ESTATE OF CARLOS GABRIELI; and it is further

ORDERED, that upon collection of the settlement funds and creation of an interest bearing escrow account, Block O'Toole & Murphy LLP., as the attorneys for PATRICIA GABRIELI, the Administrator of the ESTATE OF CARLOS GABRIELI, shall pay from said account all due and payable expenses, including specifically the agreed upon amount of the lien of the Worker's Compensation carrier, Zurich American Insurance Company, in the amount of \$69,917.55; and it is further

ORDERED, that the legal fees payable to Block O'Toole & Murphy, L.L.P., attorneys for PATRICIA GABRIELI, as Administrator of the ESTATE OF CARLOS GABRIELI, are approved in the sum of \$3,495,461.31; and it is further

ORDERED, that from said legal fee of \$3,495,461.31, Block O'Toole & Murphy, L.L.P., shall pay Calcagno & Associates the sum of \$200,000.00 in full and final satisfaction of any and all legal fees asserted by Calcagno & Associates with regard to their representation of PATRICIA GABRIELI, as Administrator of the ESTATE OF CARLOS GABRIELI; and it is further;

ORDERED, that the costs and disbursements of Block O'Toole & Murphy, L.L.P., attorneys for PATRICIA GABRIELI, as Administrator of the ESTATE OF CARLOS GABRIELI, are approved in the sum of \$13,616.06; and it is further

ORDERED, that disbursements, including the filing fee of the Union County New Jersey Surrogate's Court, shall be immediately payable from the escrow account; and it is further

ORDERED, that the balance of the up-front cash portion of the settlement of the action against Defendants, after deduction of the attorneys' fees and disbursements and the Worker's Compensation lien, in the amount of \$4,921,005.08, less the filing fee of the Union County New Jersey Surrogate's Court, shall be held in escrow by Block O'Toole & Murphy, LLP., until the issuance of Letters of Administration to the Administrator of the ESTATE OF CARLOS GABRIELI in Surrogate Court, Union County, State of New Jersey; and it is further

ORDERED, that the balance in the sum of \$4,921,005.08, less the filing fee of the Union County New Jersey Surrogate's Court, held in escrow shall be distributed to the Administrator of the ESTATE OF CARLOS GABRIELI, upon issuance of Letters of Administration by the Surrogate of Union County, State of New Jersey; and it is further

ORDERED, that the Plaintiff Estate shall deliver to the Defendants and/or the insurance carrier for the Defendants, Zurich American Insurance Company, a Structured Settlement

General Release pursuant to which the Defendants and/or their insurance carrier shall be required to make the following periodic payments pursuant to the terms set forth herein and the agreement of the parties:

(A) Future periodic payments to be paid as follows to PATRICIA GABRIELI:

- (1) Beginning 9/21/2020, \$1,738.42 payable monthly for life, guaranteed for 25 years, with the last guaranteed payment on 8/21/2045.

(Annuity Issuer: Metropolitan Tower Life Insurance Company; Cost of annuity: \$500,000.00)

- (2) Beginning 9/21/2020, \$1,849.91 payable monthly for life, guaranteed for 25 years, with the last guaranteed payment on 8/21/2045.

(Annuity Issuer: New York Life Insurance Company; Cost of annuity: \$500,000.00)

- (3) Beginning 9/21/2020, \$1,705.02 payable monthly for life, guaranteed for 25 years, with the last guaranteed payment on 8/21/2045.

(Annuity Issuer: Pacific Life & Annuity Company; Cost of annuity: \$500,000.00)

- (4) Beginning 9/21/2020, \$1,676.02 payable monthly for life, guaranteed for 25 years, with the last guaranteed payment on 8/21/2045.

(Annuity Issuer: The Prudential Insurance Company of America; Cost of annuity: \$500,000.00)

The above aforementioned payments stated as guaranteed shall be paid whether or not PATRICIA GABRIELI is alive. In the event that PATRICIA GABRIELI dies at any time prior

to the receipt of all payments described as guaranteed, the balance of any guaranteed payments shall be paid to her Estate or to any such person she may so designate; and it is further

ORDERED, that the projected purchase date of the annuities is August 10, 2020. If the Defendants/carrier are unable to fund the annuities by this funding date by reason of this Order being signed on a date that makes it impossible to timely pay for the annuities, any resultant change in the distributee's benefit payment dates or amounts caused by such delay in funding shall be recorded in the Structured Settlement General Release, qualified assignment documents and annuity contracts without the necessity of obtaining further court approval; and it is further

ORDERED, that the obligation of the Defendants and/or their insurance carrier, Zurich American Insurance Company, in paragraph (A)(1) above may be met by assigning to and arranging for an assumption by MetLife Assignment Company, Inc. ("Assignee") of the defendants' and/or the insurance carrier's obligation to make the future periodic payments set forth in paragraph (A)(1) above, pursuant to Internal Revenue Code §130(c), and that MetLife Assignment Company, Inc. may fund the obligation assumed by the purchase of an annuity from Metropolitan Tower Life Insurance Company, an A.M. Best Company rated A+ insurer licensed to do business in the State of New York, which shall be owned by MetLife Assignment Company, Inc. pursuant to Internal Revenue Code §130(d). PATRICIA GABRIELI shall have a security interest in the annuity. Metropolitan Tower Life Insurance Company shall guarantee the performance of MetLife Assignment Company, Inc.; and it is further

ORDERED, that the obligation of the Defendants and/or their insurance carrier, Zurich American Insurance Company, in paragraph (A)(2) above may be met by assigning to and arranging for an assumption by New York Life Insurance & Annuity Corporation ("Assignee")

of the defendants' and/or the insurance carrier's obligation to make the future periodic payments set forth in paragraph (A)(2) above, pursuant to Internal Revenue Code §130(c), and that New York Life Insurance & Annuity Corporation may fund the obligation assumed by the purchase of an annuity from New York Life Insurance Company, an A.M. Best Company rated A++ insurer licensed to do business in the State of New York, which shall be owned by New York Life Insurance & Annuity Corporation pursuant to Internal Revenue Code §130(d). New York Life Insurance Company shall guarantee the performance of New York Life Insurance & Annuity Corporation; and it is further

ORDERED, that the obligation of the Defendants and/or their insurance carrier, Zurich American Insurance Company, in paragraph (A)(3) above may be met by assigning to and arranging for an assumption by Pacific Life & Annuity Services, Inc. ("Assignee") of the defendants' and/or the insurance carrier's obligation to make the future periodic payments set forth in paragraph (A)(3) above, pursuant to Internal Revenue Code §130(c), and that Pacific Life & Annuity Services, Inc. may fund the obligation assumed by the purchase of an annuity from Pacific Life & Annuity Company, an A.M. Best Company rated A+ insurer licensed to do business in the State of New York, which shall be owned by Pacific Life & Annuity Services, Inc. pursuant to Internal Revenue Code §130(d). PATRICIA GABRIELI shall have a security interest in the annuity. Pacific LifeCorp shall guarantee the performance of Pacific Life & Annuity Services, Inc.; and it is further

ORDERED, that the obligation of the Defendants and/or their insurance carrier, Zurich American Insurance Company, in paragraph (A)(4) above may be met by assigning to and arranging for an assumption by Prudential Assigned Settlement Services Corporation

("Assignee") of the defendants' and/or the insurance carrier's obligation to make the future periodic payments set forth in paragraph (A)(4) above, pursuant to Internal Revenue Code §130(c), and that Prudential Assigned Settlement Services Corporation may fund the obligation assumed by the purchase of an annuity from The Prudential Insurance Company of America, an A.M. Best Company rated A+ insurer licensed to do business in the State of New York, which shall be owned by Prudential Assigned Settlement Services Corporation pursuant to Internal Revenue Code §130(d). PATRICIA GABRIELI shall have a security interest in the annuity. The Prudential Insurance Company of America shall guarantee the performance of Prudential Assigned Settlement Services Corporation; and it is further

ORDERED, that the Defendants and/or their insurance carrier, Zurich American Insurance Company, shall immediately forthwith fund the periodic payment obligation in paragraph (A)(1) by issuing a check, draft or wire transfer made payable to or wired to MetLife Assignment Company, Inc. in the sum of Five Hundred Thousand and 00/100 Dollars (\$500,000.00). If payment is made by check or draft, said check or draft shall be delivered to Settlement Funding Associates, Inc., one of the structured settlement brokers placing the case; and it is further

ORDERED, that the Defendants and/or their insurance carrier, Zurich American Insurance Company, shall immediately forthwith fund the periodic payment obligation in paragraph (A)(2) by issuing a check, draft or wire transfer made payable to or wired to New York Life Insurance Company in the sum of Five Hundred Thousand and 00/100 Dollars (\$500,000.00). If payment is made by check or draft, said check or draft shall be delivered to

Settlement Funding Associates, Inc., one of the structured settlement brokers placing the case;
and it is further

ORDERED, that the Defendants and/or their insurance carrier, Zurich American Insurance Company, shall immediately forthwith fund the periodic payment obligation in paragraph (A)(3) by issuing a check, draft or wire transfer made payable to or wired to Pacific Life & Annuity Services, Inc. in the sum of Five Hundred Thousand and 00/100 Dollars (\$500,000.00). If payment is made by check or draft, said check or draft shall be delivered to Settlement Funding Associates, Inc., one of the structured settlement brokers placing the case;
and it is further

ORDERED, that the Defendants and/or their insurance carrier, Zurich American Insurance Company, shall immediately forthwith fund the periodic payment obligation in paragraph (A)(4) by issuing a check, draft or wire transfer made payable to or wired to Prudential Assigned Settlement Services Corporation in the sum of Five Hundred Thousand and 00/100 Dollars (\$500,000.00). If payment is made by check or draft, said check or draft shall be delivered to Settlement Funding Associates, Inc., one of the structured settlement brokers placing the case; and it is further

ORDERED, that no part of the sum being paid by Defendants and/or their insurance carrier, Zurich American Insurance Company, to provide future periodic payments as set forth in this Order may be paid directly to Plaintiff Estate or to the distributee, the parties having negotiated for and the Court having determined that a structured settlement is in the best interest of the ESTATE OF CARLOS GABRIELI and the distributee and that said periodic payments constitute damages on account of physical injury or physical sickness, including wrongful death,

in a case involving physical injury or physical sickness, including wrongful death, within the meaning of §104(a)(2) and §130(c) of the Internal Revenue Code of 1986, as amended; and it is further

ORDERED, that the life insurers issuing the annuities shall not make any payments to Patricia Gabrieli until the Surrogate of Union County, State of New Jersey has issued Letters of Administration to the Administrator of the Estate of CARLOS GABRIELI; and it is further

ORDERED, that the filing of a bond is dispensed with; and it is further

ORDERED, that this Order be provided to the Surrogate of Union County, State of New Jersey, for the administration of the Estate of CARLOS GABRIELI.

ENTER



J. S. C.

HON. THOMAS P. ALIOTTA
JUSTICE OF THE SUPREME COURT