

**National Union Fire Ins. Co. of Pittsburgh, PA v  
Reichman**

2021 NY Slip Op 34008(U)

October 13, 2021

Supreme Court, Westchester County

Docket Number: Index No. 54594/2021

Judge: Joan B. Lefkowitz

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT: STATE OF NEW YORK  
IAS PART WESTCHESTER COUNTY  
PRESENT: HON. JOAN B. LEFKOWITZ, J.S.C.

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

-----X  
NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA,

DECISION & ORDER

Petitioner,

Index No: 54594/2021

-against-

Motion Sequence Nos. 1 and 2

ALLEN REICHMAN,

Respondent.  
-----X

The following papers (NYSCEF document nos. 1-16) were read on: (1) the petition for a judgment, pursuant to CPLR 5206 (e), directing that: (a) respondent's interest in the real property described in the petition be sold by the Westchester County Sheriff; (b) those proceeds from such sale of the real property not exceeding \$150,000.00, be paid to respondent; (c) the unpaid principal balance of the judgment obtained by petitioner be adjudged to be a lien on the surplus, together with costs, disbursements, and attorneys' fees incurred from this proceeding, and that such lien be enforced; and (d) the surplus be applied to the judgment obtained by petitioner as against respondent (sequence no. 1); and (2) the motion by respondent for an order, pursuant to CPLR 3211 (a) (1), (3), and (7), dismissing the petition (sequence no. 2).

Motion Sequence No. 1

Notice of Petition-Petition-Exhibits (A-D)

Motion Sequence No. 2

Notice of Motion-Affirmation-Exhibits (1-2)-Memorandum of Law  
Memorandum of Law in Opposition-Exhibits (A-B)

Upon reading the foregoing papers, it is

ORDERED the petition is denied; and it is further

ORDERED the motion by respondent is granted, and the petition is dismissed in accordance with CPLR 3211(a)(7).

In 2015, the respondent pleaded guilty in the United States District Court for the Southern District of New York, to one count of the crime of conspiracy to commit wire fraud, in violation of 18 USC § 371. Respondent was sentenced to twenty-one months imprisonment and further ordered to pay \$10,000,000.00 as restitution to Oppenheimer & Co., Inc. (Oppenheimer), as payee. In its restitution order, the Court (per Hon. Naomi Reice Buchwald, U.S.D.J.), *inter alia*, set forth the following instructions regarding the payment of the restitution to Oppenheimer:

- “1. A \$10,000.00 payment to Oppenheimer in advance of the defendant’s surrender.
2. Payments of \$500.00 per month to Oppenheimer until the defendant surrenders.
3. Payments of the greater of \$500.00 per month if the defendant is employed; \$250.00 per month if he is not employed; or 10% of his gross wages, after he completes his sentence of incarceration, until his restitution is paid in full.”

Payments were directed to be made to the Clerk of the United States District Court. Subsequently, on September 14, 2020, the Court (per Hon. Naomi Reice Buchwald, U.S.D.J.) issued an order amending the restitution order to modify the restitution payee information, substituting Oppenheimer with National Union Fire Insurance Company of Pittsburgh, PA, the petitioner herein. The terms of the original restitution order otherwise remained unaltered. It is alleged that, to date, respondent has paid \$12,750.00 in restitution, and that \$9,987,250.00 remains outstanding (*see* petition at ¶ 5, NYSCEF Doc No. 1).

On March 4, 2021, National Union recorded an abstract of the judgment with the Westchester County Clerk. Contending that it, as judgment creditor, may pursue collection of the federal restitution order in this court by compelling the sale of respondent’s real property in accordance with CPLR 5206 (e), this proceeding by National Union ensued. Respondent opposes the petition and moves to dismiss in accordance with various subsections under CPLR 3211 including, (a)(7).

Section 3664 of the Mandatory Victims Restitution Act of 1996 (MVRA) codifies the right to enforce a federal criminal restitution judgment. Section 3664(m)(1) of the MVRA authorizes enforcement by two parties, namely, the United States (at subsection A) and the victim named in the restitution order (at subsection B). The MVRA permits victims named in a restitution order to obtain an abstract of judgment and record it as a judgment lien on a defendant’s property (18 U.S.C. § 3664[m][1][B]). Specifically, that provision of the MVRA provides that:

“At the request of a victim named in a restitution order, the clerk of the court shall issue an abstract of judgment certifying that a judgment has been entered in favor of such victim in the amount specified in the restitution

order. Upon registering, recording, docketing, or indexing such abstract in accordance with the rules and requirements relating to judgments of the court of the State where the district court is located, the abstract of judgment shall be a lien on the property of the defendant located in such State in the same manner and to the same extent and under the same conditions as a judgment of a court of general jurisdiction in that State.”

The government’s right to enforce restitution under subsection A is expansive insofar as that provision provides that it has “all other available and reasonable means” (18 USC § 3664[m][1][A][ii]; *see also* 18 USC § 3613[a], which empowers the government to enforce an order of restitution “in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law”). In comparison, the victim’s rights under the MVRA are limited (*see United States v Stoerr*, 695 F3d 271, 279 [3d Cir. 2012] “[a] victim’s role...is limited to conferring with the Government ‘to the extent practicable’ regarding the amounts of restitution, § 3664[d][1]; submitting information to the probation officer regarding his or her losses; § 3664[d][2][A][iii],[vi]; petitioning the district court for an amended restitution award if he or she discovers further losses, § 3664[d][5]; moving for an adjustment of the defendant’s payment schedule if the defendant’s economic circumstances change, § 3664[k]; and obtaining ‘an abstract of judgment certifying that a judgment has been entered in’ his or her favor. § 3664 [m][1][B].”). The Appellate Division, First Judicial Department, has explained that “[a]lthough the MVRA was adopted to make restitution for victims more widespread, it does not appear that this intent was translated into enforcement mechanisms meant to ensure that victims could bring private state court actions to obtain the ordered restitution where government collection efforts fell short, other than by obtaining and enforcing a lien granted under 18 USC § 3664(m)” (*Mikhlov v Festinger*, 173 AD3d 130, 135 [1st Dept 2019]). The First Department further explained that “subsection B limits enforcement for victims to obtaining a lien. Thus, Congress set a ‘negative implication’ that all other enforcement mechanisms, including the enforcement of an abstract judgment in a separate court proceeding, are unavailable to private victims” (*Mikhlov v Festinger*, 173 AD3d 130, 135 [1st Dept 2019], quoting *Schultz v United States*, 594 F3d 1120, 1123 [9th Cir. 2010]).

Ultimately, in *Mikhlov*, the First Department concluded that the petitioner therein, had no standing to enforce the abstract judgment on a restitution order since the petitioner never recorded the abstract judgment as a lien on the defendant-respondent’s property (*see Mikhlov*, 173 AD3d at 136). The instant proceeding is therefore distinguishable from *Mikhlov* since it is undisputed that the petitioner herein, National Union, recorded the abstract judgment with the Westchester County Clerk as a lien on the respondent’s real property. The issue herein is whether under § 3664 (m)(1)(B) of the MVRA, petitioner, a criminal victim, can unilaterally enforce the lien in this court to satisfy a portion of the federal restitution order by compelling the sale of respondent’s real property. Neither petitioner nor respondent cite to any binding legal precedent on this issue and the court’s research has revealed no such binding authority.

Based upon the “negative implication” set by Congress regarding enforcement mechanisms of restitution orders by private victims (*see Mikhlov*, 173 AD3d at 135; *see also Stoerr*, 695 F3d at 279), the text of subsection B, which expressly limits a victim’s right to recording the abstract judgment as a lien, the federal government’s expansive rights to enforce a restitution order (*see United States v Frank*, 8 F4th 320 [4th Cir. 2011]; *United States v Witham*, 648 F3d 40 [1st Cir. 2011]; *United States v DeCay*, 620 F3d 534 [5th Cir. 2010]), and the terms of the federal court’s restitution order herein which provides for a schedule of payments and directs that restitution payments be made to the United States District Court Clerk who will then distribute same to petitioner, the court finds that the petition fails to state a claim upon which relief may be granted (*confer Systemax, Inc. v Fiorentino*, 283 So.3d 415 [Fla. 3d DCA 2019] [holding that 18 USC § 3664 (m)(1)(B) does not permit a crime victim to pursue collection of a federal restitution order in state court]). Accordingly, the petition is denied, the motion to dismiss pursuant to CPLR 3211 (a)(7) is granted, and this proceeding is dismissed.

E N T E R,

Dated: White Plains, New York  
October 13, 2021

Joan B.  
Lefkowitz

Digitally signed by Joan B. Lefkowitz  
DN: CN=Joan B. Lefkowitz, E=jlcfkowi@nycourts.gov  
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HON. JOAN B. LEFKOWITZ, J.S.C.