

**Matter of Bernard**

2025 NY Slip Op 33897(U)

October 10, 2025

Supreme Court, Kings County

Docket Number: Index No. 515145/2025

Judge: Wavny Toussaint

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 10<sup>th</sup> day of October, 2025.

P R E S E N T:

HON. WAVNY TOUSSAINT,

Justice.

-----X  
In Re: The Matter of and Application For Leave to Proceed in the State of New Jersey with a Proposed Structured Settlement Payment Purchase Contract of Jahiem Bernard

Index No.: 515145/2025

**DECISION AND ORDER**

-----X  
The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Order to Show Cause/  
and Affidavits (Affirmations) Annexed  
Cross Motion and Affidavits (Affirmation) Annexed  
Answers/Opposing Affidavits (Affirmations)  
Reply Affidavits (Affirmations)  
Affidavit (Affirmation)  
Other Papers

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Upon the foregoing papers, Clear Ventures, LLC (“Petitioner”) moves by (Seq. 01) Order to Show Cause, pursuant to 26 U.S.C. § 5891(b)(2), seeking an order, among other things, removing any and all restrictive anti-assignment provisions and permitting the sale of structured settlement payment rights of Jahiem Bernard (“Payee”) in a proceeding

commenced in New Jersey.

### **BACKGROUND**

Jahiem Bernard was a minor when this Court issued an Infant Compromise Order (Index No. 502566/2013), approving the settlement of a medical malpractice/personal injury action. After the initial payment of \$30,000.00 on February 12, 2025, per the Infant Compromise Order, Payee now seeks to transfer the full balance of his structured settlement payment rights (totaling at \$1,306,161.19) to Clear Ventures, LLC in exchange for a lump sum payment with the intention of purchasing investment property.

To facilitate this, a special proceeding was commenced in the Superior Court of New Jersey, pursuant to N.J.S.A 2a:16-63. Movant counsel alleges that a New Jersey Court determined that the proposed transfer is in the Payee's best interest and that the terms are fair and reasonable. Only a redacted copy of the transfer terms has been provided. Further, no copy of the New Jersey court order or transcript reflecting a hearing was provided.

### **PETITIONER'S CONTENTION**

Petitioner argues that, because the Payee is no longer a minor and resides in New Jersey, jurisdiction over the transfer properly lies in that state. Petitioner further contends that this Court should defer to the findings of the New Jersey court and authorize the transfer by issuing a "qualified order" under 26 U.S.C. § 5891(b)(2), notwithstanding language in the original Infant Compromise Order and related settlement documents that prohibit or restrict any assignment or transfer of structured settlement rights. The petition further states that the court is not being asked to determine if the transfer is in the best interest of the payee.

### DISCUSSION

Under 26 U.S.C. § 5891(b)(2), a forty percent excise tax is imposed on any person acquiring structured settlement payment rights unless the transfer is authorized by a qualified order issued by a court with jurisdiction over the matter. To qualify, the transfer must not contravene any applicable law or court order and must be found to be in the best interest of the payee, considering the welfare and support of any dependents (26 U.S.C. § 5891).

In New York State, the procedure for obtaining such approval is governed by General Obligations Law Title 17. These statutes require specific and express findings of each provision listed in the statutes” (*Pinnacle Capital, LLC v O’Bleanis*, 214 AD3d 913, 916 [2d Dept 2023]). Applicable here, § 5-1706 requires that (i) the transfer is in the best interest of the payee; and (ii) the discount rate, fees, and expenses used to calculate the net payment are fair and reasonable (*Id.*)

In the instant matter, the original settlement documents and Infant Compromise Order expressly prohibit or restrict the assignment or transfer of the structured settlement payment rights. These terms were negotiated as part of a judicially approved compromise of a tort claim involving a minor and were specifically intended to protect the long-term financial interests of the Payee. This Court is not persuaded that it should disregard its prior order or the anti-assignment provisions of the settlement without compelling justification (*See In re 321 Henderson Receivables, L.P.*, 13 Misc 3d 526 [Sup Ct, Erie Cty 2006]; *Matter of J.G. Wentworth Originations, LLC v Hall*, 43 Misc 3d 837 [Sup Ct, Yates Cty 2014]).

Moreover, Petitioner has failed to submit adequate documentation to enable the Court to assess whether the transfer is in the best interest of the payee and whether the fees and cost associated with the transaction are fair and reasonable. Notably, the transfer agreement redacts the amount to be transferred, a critical detail necessary for a proper analysis under the General Obligations Law (DRB Capital, LLC v Santana, 84 Misc 3d 1265(A) [Sup Ct, Kings Cty 2025]). The motion papers lack sufficient factual support for the relief sought.

**CONCLUSION**

Accordingly, it is hereby

**ORDERED** that petitioner’s motion for the issuance of a qualified order pursuant to 26 U.S.C. § 5891(b)(2), is denied, and the petition is dismissed without prejudice to renew upon the submission of proper papers.

For Clerks use only

MG \_\_\_\_\_

MD \_\_\_\_\_

Motion Seq.

E N T E R

  
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J.S.C.

Hon. Wavny Toussaint  
J.S.C.