

**Matter of Structured Advisors LLC v GE Capital
Assignment Corp.**

2025 NY Slip Op 35353(U)

February 5, 2025

Supreme Court, Westchester County

Docket Number: Index No. 75170/2024

Judge: William J. Giacomo

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This opinion is uncorrected and not selected for official publication.

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.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. WILLIAM J. GIACOMO, J.S.C.**

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In the Matter of the Petition of STRUCTURED ADVISORS, LLC For Judicial Approval of the Sale and Transfer of Structured Settlement Payment Rights, pursuant to New York General Obligations Law, 5-1701, et seq.,

Index No. 75170/2024

Petitioner,

**DECISION & ORDER
Motion Sequence 001**

– against –

GE Capital Assignment Corporation (“Settlement Obligor”),
Genworth Life Insurance Company of New York (“Annuity Issuer”), and Jennifer Cuevas,

Respondents.

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The following papers were considered on the petition for the sale of annuity payments.

Papers Considered

NYSCEF Doc. No. 1-17

Petition/Exhibits A-I/Order to Show Cause/Correspondence with the Court

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner Structured Advisors, LLC (hereinafter, petitioner) commenced this special proceeding pursuant to General Obligations Law, Title 17, known as the Structured Settlement Protection Act (SSPA), for the approval of transfer of certain structured settlement rights to it from Jennifer Cuevas (Cuevas). Cuevas is the beneficiary of annuity payments arising from a settlement of a personal injury lawsuit.

The proposed transfer order seeks to allow Cuevas to assign monthly payments of various amounts, beginning on October 3, 2041 and ending on September 3, 2053. The first seven years, entitled Count 1, includes “guaranteed payments.” The aggregate amount of the purchased payments is \$157,419.36. The discounted present value of the aggregate purchased payments at

[1]

the interest rate of 4.4% is \$64,119.67. In consideration for the assignment payments, Cuevas would receive a lump sum payment of \$16,122.04 from petitioner, which represents 25.14% of the estimated current value of the payments based upon the discounted value using the applicable federal rate.

Under Count 2, the remaining five years under the proposed settlement agreement, Cuevas would assign 60 monthly life contingent payments of \$2,105.57, beginning 10/3/2048 through and including September 3, 2053, with an annual increase of 3%. The aggregate amount of the purchased payments is \$134,145.12. The discounted present value of the aggregate purchased payments at the interest rate of 4.4% is \$42,005.04. In consideration for the assignment payments, Cuevas would receive a lump sum payment of \$5,500 from petitioner, which represents 13.09% of the estimated current value of the payments based upon the discounted value using the applicable federal rate.

In support of Count 1, Cuevas affirms that she is the “recipient of certain guaranteed payments under a structured settlement.” She continues that she voluntarily entered into an agreement with petitioner to sell and assign her future annuity payments. She affirms that she is a single female with three dependents. Cuevas claims that she will be using the proceeds to pay high interest revolving debt and medical bills, and that the remainder of the funds will be used in the event of future medical expenses. She affirms that, although petitioner advised her to seek professional advice prior to entering into the proposed agreement, she voluntarily chose not to do so. Cuevas submits an affidavit in support of Count 2 which is identical to the one in support of Count 1.

Cuevas submits another affidavit whereby she states that she is a married woman with three children. She also affirms the following, in relevant part:

“As a result of a settlement of a personal injury claim, I became entitled to receive certain structured settlement payment rights (i.e., periodic payments), as follows: \$500.00 monthly guaranteed for 4 years (certain only). Benefits commence on 10/03/2009; \$25,000.00 Annually guaranteed for 4 years (certain only) Benefits commence on 10/03/2009; \$726.49 Monthly guaranteed for 36 years certain and life thereafter. Benefits increase at 3% compounded each year. Benefits commence 10/03/2012; \$50,000.00 guaranteed Lump Sum due on 10/03/2021.”

Cuevas affirms that she plans to use the \$21,622.04, which is the total amount she expects to receive from petitioner, to pay off high interest revolving debt, medical bills and for future additional expenses. She does not provide any bills or documentation in support of these expenses.

[2]

According to Cuevas, she has successfully assigned some of her structured settlement payments one previous time in 2016. *See* Index No. 66697/2015.

DISCUSSION

The SSPA was enacted in 2002 to establish “procedural safeguards for those who sell settlements that are awarded as a result of litigation, due to a recognition that many of the people who receive such settlements are being compensated for very serious, debilitating injuries, and have been unfairly taken advantage of in the past by the businesses that purchase their settlement.” *Pinnacle Capital, LLC v O’Bleanis*, 214 AD3d 913, 915 (2d Dept 2023) (internal quotation marks and citation omitted).

The SSPA requires that certain procedural and substantive safeguards be followed before a structured settlement payment may be transferred (GOL § 1705). The procedure includes that a copy of a disclosure statement as required under GOL § 5-1703 be attached to the petition and that proof of service upon the payee be provided. Moreover, pursuant to GOL § 5-1706, entitled, Approval of Transfers of Structure Settlement Payment Rights, “No direct or indirect transfer of structure settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction based upon express findings by such court that:

- (a) the transfer complies with the requirements of this title;
- (b) 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 net advance amount are fair and reasonable;
- (c) the payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived such advice in writing;
- (d) the transfer does not contravene any applicable statute or the order of any court of other government authority; and
- (e) is written in plain language and in compliance with section 5-702 of this article.”

In determining the matter at issue, the court is required to assess whether the statutory mandates of the SSPA have been met. A review of the submissions accompanying the petition demonstrates that the application procedurally and facially complies with GOL §§ 5-1703 and 5-

1706(a)(c)(d) and (e). Since such procedural compliance is evident herein, the court must then determine, pursuant to 5-1706 (b), whether “the transfer is in the best interest of the payee, taking into account the welfare and support of the payee’s dependents [if any]; 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.”

Although fair and reasonable are undefined in the SSPA, Courts have held that proposed transfers of a portion of a payee’s structured settlement resulting in the transferee paying less than half of its present discounted value are not fair and reasonable as required by the SSPA. *See e.g. In re Settlement Funding of NY L.L.C.*, 195 Misc 2d 721, 723 (Sup Ct, Rensselaer County 2003); *see also Petitioner v United States Life Ins. Co. in the City of New York (In re Petition of J.G. Wentworth Originations, LLC)*, 2022 NY Misc Lexis 53191, *14 (Sup Ct, Westchester County 2022) (Noting that “[s]imilar heavy discounts of almost 50% have been found to be unfair and unreasonable by the Courts deciding previous proceedings regarding the transfer of Ms. Gibson’s structured settlement payment rights”).

In the present case, in Count 1, the aggregate amount of the payments sold to petitioner would be \$157,419.36, at a present value of \$64,119.67. In return, Cuevas would receive a lump sum payment of \$16,122.04, which represents 25.14% of the estimated current value of the payments. In Count 2, the aggregate amount of the payments sold to petitioner would be \$134,145.12, at a present value of \$42,005.04. In return, Cuevas would receive a lump sum payment of \$5,500, which represents 13.09% of the estimated current value of the payments. Here, the amount payable to Cuevas in both Counts is significantly less than half of the discounted present value, and is not fair and reasonable.

Further, the record reflects that, pursuant to another Court order dated January 21, 2016, Cuevas was to receive \$101,471.19 from Palm Harbor, LLC, for transferring 288 monthly payments from October 3, 2017 through September 3, 2041. The instant application now seeks to transfer Cuevas’s monthly payments commencing on October 3, 2041 through September 2053. Cuevas also waived her right to speak to a financial professional. “New York courts have observed that structured settlements are designed to preserve the injured person’s long-term financial security, and may conclude that a transfer is not in the payee’s best interest if it will jeopardize or irreparably impair the financial security afforded to the payee. . . by the periodic payments.” *Cordero v Transamerica Annuity Serv. Corp.*, 339 NY3d 399, 421 (2003) (internal

quotation marks and citations omitted). As noted, if the Court approves this order, Cuevas will not have any more guaranteed monthly payments until 2053.

Moreover, although Cuevas affirms that she needs the funds for revolving debt and medical expenses, she does not provide any documents to substantiate her proposed reasons for needing the immediate funds. *See e.g. Whitney v LM Prop. & Cas. Ins. Co.*, 2011 NY Slip Op. 51268(U), *5 (Sup Ct, Westchester County 2011) (“What Plaintiff Whitney’s application also lacks, is an explanation as to why the Plaintiff needs these payments now”). Thus, petitioner has also failed to meet its burden of establishing that the transaction is in Cuevas’s best interest.

Consequently, at this time, the Court finds that it is not in Cuevas’s best interest to transfer to petitioner annuity payments.

Accordingly, the petition is DENIED and the proceeding is DISMISSED.

Dated: White Plains, New York
February 5, 2025


HON. WILLIAM J. GIACOMO, J.S.C.