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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JANICE A. TAYLOR IAS Part 15
Justice

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In the Matter of the Petition of ASHLEY LOISEAU for Judicial Approval of a Structured Settlement Annuity Sale and Assignment Agreement with WISTERIA FUNDING, LLC, pursuant to Article 5, Title 17 of the New York General Obligations Law,

Petitioner(s),

- against -

NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION and NEW YORK LIFE INSURANCE COMPANY,

Respondent(s).

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Index No.:28517/11

Motion Date: 1/31/12

Motion Cal. No.: 23

Motion Seq. No: 1

The following papers numbered 1 - 4 read on this motion by the petitioner for an order granting judicial approval for the transfer of structured settlement payment rights.

	Papers Numbered
Order to Show Cause-Affirmation-Exhibits-Service........	1 - 4

This petition seeks judicial approval for the transfer of structured settlement payment rights. According to the petition, respondent Ashley Loiseau ("Loiseau") is the recipient of certain guaranteed payments under a structured settlement. Pursuant to this settlement, Loiseau is to receive, *inter alia*, monthly payments of $641.56 commencing on February 1, 2012 and ending on February 1, 2032. Loiseau now seeks to sell these monthly payments to the petitioner.

Petitioner makes the instant application, pursuant to General Obligations Law §§5-1701, known as the "Structured Settlement Protection Act" ("SSPA"), for judicial approval of the transfer. The SSPA was enacted to protect structured settlement payees from being taken advantage of by corporations who profit from the acquisition of structured settlements (*see, generally, In re Petition of Peachtree Settlement Funding LLC v. Myricks, 2012 NY Slip Op. 30497U (Sup. Ct. N.Y. Co. 2003); In re Petition of Settlement Funding of New York, LLC., et al.*, 761 N.Y.S.2d 816 (Sup. Ct. N.Y. Co. 2003). The Assembly Memorandum in Support of the enactment of the Structured Settlement Protection Act sets forth

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the following as justification for the act:

> "Structured settlements are a well-recognized means of compensating personal injury victims.… They are negotiated between the injured person's counsel and the other parties to a personal injury action.… The structuring of a settlement enables the settlement recipient to receive secure tax-free income over a course of years or a lifetime to provide for future medical care, housing, education, etc. In this way, the proceeds from an award are not dissipated or lost by individuals unaccustomed to managing large sums.
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> "Recently a growing number of factoring companies have used aggressive advertising, plus the allure of quick and easy cash, to induce settlement recipients to cash out future payments, often at substantial discounts, depriving victims and their families of the long-term financial security their structured settlements were designed to provide. Although transfers of structured settlement payments are generally prohibited by contract (and often prohibited under applicable state law), factoring companies have built a rapidly expanding business around circumventing these prohibitions.
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> "This market in the buying and selling of injured individuals' payment streams can pose a hazard to existing recipients of structured settlements and to the public assistance programs on which recipients must often rely, once they have traded away secure income from structured settlements. The market also threatens the viability of structured settlements for injury victims who may need them in the future. This legislation seeks to curtail this practice by limiting transfers of structured settlement payments to true hardship cases. The Act does this by requiring full disclosure of the costs of any factoring transaction, advance notice to interested parties, and court approval of any transfer. Transfers of structured judgments or settlements for workers' compensation claims would continue to be prohibited" (2002 McKinney's Session Laws of NY, at 2036.)

General Obligations Law § 5-1705 delineates the procedure that must be followed for judicial approval. A disclosure statement, as required under General Obligations Law § 5-1703, must be attached to the application along with proof of service on the payee of the disclosure. Following a determination that the application is procedurally sufficient, a court must then hold a hearing to determine if the transfer is in the best interest of the payee.

In determining the payee's best interest, a court may consider "the welfare and support of the payee's dependants; 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" (*In the Matter of the Petition of 321 Henderson Receivables, LLC.*, 2008 NY Slip Op 51351[U] (Sup. Ct. Kings Co. 2008). A court's determination of what constitutes "the best interest of a payee" may also be based, following a hearing, on the specific circumstances of the action, the payee's age, physical and mental capacity, the payee's intended use of the proceeds and whether he or she obtained independent professional advice regarding the transaction (See, General Obligations Law §5-1706(b); *In the Matter of the Petition of 321 Henderson Receivables, LLC, supra*).

Initially, the court finds that the petition is in compliance with the procedural mandates by the SSPA. Thus, the court must now determine whether the proposed transaction is in the best interest of respondent/payee Ashley Loiseau.

The payee seeks the transfer of approximately $188,305.20 due to be disbursed in monthly payments from February 1, 2012 to February 1, 2032. An annual discount rate of 19.82% was used to determine the net advance amount of &40,480.35. In his affidavit sworn to on December 1, 2011, payee/respondent Loiseau states that he is a 32-year old, single man with no dependants. Mr. Loiseau also stated that he was advised of his right to seek independent, professional advice regarding the subject transaction but declined to do so. In a hearing held before this court on January 31, 2012, Mr. Loiseau stated that he is employed, earns an annual salary of approximately $40,000 per year and that he intends to use the money to purchase a cooperative or condominium apartment.

During this hearing, it was also revealed that Mr. Loiseau has attempted, on at least two prior occasions, to sell a portion of his structured settlement. A review of the file maintained by the Queens County Clerk, as well as a review of the documents submitted with petitioner's application reveals that, on or about December 8, 2008,the Honorable Patricia P. Satterfield, J.S.C. denied respondent/payee Loiseau's application to transfer $108,020.56 of his settlement in exchange for a lump sum of $49,500. In the special proceeding brought pursuant to index number 15736/08, Justice Satterfield stated that payee Loiseau testified that he needed the money in order to start and fund a laundromat business. However, in her December 8, 2008 order, Justice Satterfield determined that payee Loiseau's lack of appreciation for the financial consequences of the transfer, refusal to seek professional advise on the transaction and unfamiliarity with the process of starting a laundromat were all factors in her determination that said transfer was not in his best interest.

Additionally, by commencement of an action pursuant to index number 22615/10, respondent/payee Loiseau again attempted to transfer a portion of his structured settlement. By order dated October 19, 2010, the Honorable Robert J. McDonald, J.S.C., approved Mr. Loiseau's application to sell approximately $90,241.17 of his structured payments. Out of that transaction, respondent/payee Loiseau received approximately $37,544.66. In his October 19, 2010 order Justice McDonald noted that payee Loiseau intended to use the money as capital to fund his servicing/product business known as AML Enterprises, Inc. ("AML").

A review of the specific circumstances of this transaction lead the undersigned to the conclusion that the subject transaction is not in the best interest of respondent/payee Loiseau. This court finds that the proposed exchange of $188,305.20 for a payment of $40,480.35 is neither fair nor reasonable. Additionally, although respondent/payee Loiseau testified that he hoped to use the $40,480.35 to purchase a cooperative or condominium apartment outright, he also stated that he had not found a home being offered for sale at that price and had not received acceptance of any offers placed to purchase a home.

It is also noted that, although Justice McDonald's October 19, 2010 order stated that payee/respondent Loiseau intended to use the $37,544.66 in transferred settlement payments to fund AML; at the January 31, 2012 hearing, Mr. Loiseau told this court that his only work-related income was the $40,000 per year salary that he received from his employer CNN Packing. Mr. Loiseau did not inform this court that he received any profit or income from AML or that he was even involved in such a business. Although, Justice McDonald authorized the release of transferred settlement payments, in the amount of $37,544.66 in November, 2010 it is apparent that a little more than one year later, respondent/payment Loiseau still derives no income from this business. Thus, the capacity of payee/respondent Loiseau to make sound business decisions is questioned by this court. Accordingly, it is,

ORDERED, that the instant application is hereby denied. The foregoing constitutes the decision, judgment and order of this court.

Dated: March 30, 2012

JANICE A. TAYLOR, J. S. C.

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