

**Matter of Bofi Federal Bank v Casey**

2014 NY Slip Op 30197(U)

January 17, 2014

Sup Ct, Suffolk County

Docket Number: 2013-63262

Judge: Jeffrey Arlen Spinner

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**SUPREME COURT-STATE OF NEW YORK  
TRIAL TERM PART XXI-SUFFOLK COUNTY**

**HON. JEFFREY ARLEN SPINNER**  
Justice of the Supreme Court

**COPY**

**In The Matter Of The Petition Of**

**BOFI FEDERAL BANK**

Petitioner

**For Approval Of The Sale and Transfer Of  
Structured Settlement Payment Rights Of  
RONALD CASEY In Accordance With Gen.  
Oblig. Law § 5-1701 et. seq.**

- against -

**RONALD CASEY, INSURANCE COMPANY OF  
NORTH AMERICA and METROPOLITAN  
LIFE INSURANCE COMPANY,**

Respondents

**Index No.: 2013-63262**

Motion Seq. 001-MD CASEDISP

Initial Return Date: December 4, 2013

Final Submit Date: December 4, 2013

**ORDER UPON PETITIONER'S  
APPLICATION FOR TRANSFER OF  
STRUCTURED SETTLEMENT  
PAYMENT**

The Petitioner commenced this special proceeding pursuant to CPLR Article 4 by Order To Show Cause dated October 31, 2013 and made returnable December 4, 2013. The Petition thereunto appended seeks approval of an agreement to transfer certain structured settlement rights from Respondent RONALD CASEY ("CASEY") to Petitioner BOFI FEDERAL BANK ("BOFI"). More specifically, Respondent CASEY proposes to transfer unto Petitioner BOFI some 215 payments that he is due to receive, which aggregate \$ 652,278.40 and are due and payable to him between February 10, 2021 and September 10, 2038, with a claimed discounted present value of \$ 466,271.07. Petitioner BOFI generously proposes to pay Respondent CASEY a total of \$ 15,000.00 for these payments that he has the right to receive (approximately 3.22% of discounted present value and 2.30% of full value).

The Court has carefully examined and digested all of the submissions herein. In addition, the Court has reviewed and analyzed the Structured Settlement Protection Act [“SSPA”] which is codified in Title 17 of the New York General Obligations Law, §§ 5-1701 *et. seq.* (L. 2002, C. 537) which is the controlling statutory scheme for the matter that is *sub judice*. The Court is constrained to note that counsel who have filed the Order to Show Cause are actually representing only Petitioner BOFI and that Respondent CASEY does not appear to have counsel. In fact, neither CASEY nor anyone on his behalf has formally appeared in this proceeding.

Respondent CASEY is the named beneficiary (and hence, the payee) under a certain structured settlement agreement dated September 24, 1990, a copy of which is appended to the moving papers as Exhibit B. In this matter, Respondent CASEY asks his Court to allow BOFI to accept future payments to which he is entitled, which aggregate \$ 652,278.40 in exchange for payment of \$ 15,000.00 today. It is averred by Petitioner BOFI that the present value of these payments stands at \$ 466,271.07. Appended to the Petition as Exhibit “A” is the Respondent CASEY’S Affidavit which purports to comport with the statutory scheme. In that Affidavit, Respondent CASEY asserts that he is unmarried, without any dependents and without the obligation to support anyone other than himself. An additional Affidavit, designated as Exhibit “E” to the moving papers is likewise signed by Respondent CASEY and asserts verbatim, in pertinent part, that “...*having the proceeds will allow me to better provide for me and my dependents’ future by enabling me to pay for necessary dental procedures.*” This sworn statement is clearly at odds with the others that have been submitted.

In attempting to reach an appropriate disposition herein, the Court is required to examine the submissions in order to determine whether the express statutory mandates of the SSPA have been met. A careful review reveals that, at least procedurally and facially, the application herein comports with the provisions of GOL § 5-1706(a), (c), (d) and (e). Once the Court has determined that such procedural compliance is evident, it is statutorily required, before granting approval of the transaction, to determine that

“...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 gross advance amount and the fees and expenses used to determine the net advance amount, are fair and reasonable.” GOL § 5-1706(b).

Therefore, in order to satisfy both the spirit and the intent of the statute (that is, to ensure that the payee of such a structured settlement does not become somehow victimized or hoodwinked and thereby unwittingly fritter away his or her entitlement thereunder) the Court is required to venture into two additional areas before approving a proposed transfer of rights under a structured settlement agreement. First, the Court must both consider and determine whether the transaction is in the best interests of the beneficiary. Second, the Court must both consider and determine whether the transaction, when viewed as a whole, is both fair and reasonable in all respects, *Matter of Settlement Funding of New York LLC [Cunningham]* 195 Misc 2d 721 (Sup. Ct. Rensselaer County, 2003).

That having been said, the statute, regrettably, is decidedly silent as to what constitutes the best interests of the beneficiary. However, a review of both the SSPA and case law seems to suggest that such a “best interests” inquiry should include, at a minimum, consideration of the following factors, viz.: (a) physical age, level of maturity, physical and mental capacity of the beneficiary; (b) the beneficiary’s ability to earn a living and to support his or her dependents; (c) the beneficiary’s intended usage of the proceeds; (d) the beneficiary’s present financial situation and whether he or she is laboring under such a hardship as to be in dire and immediate need of the proceeds; (e) whether the beneficiary has obtained independent counsel regarding the financial consequences of the proposed transfer; (f) the level of financial sophistication, or lack thereof, of the beneficiary; and (g) the timing of the application *vis-a-vis* any other scheduled payments.

The Court will endeavor to consider each of the enumerated “best interests” factors individually. First, Respondent CASEY avers that he is 43 years of age and is disabled (and therefore, presumably unemployed) and that he receives income of \$ 940.00 per month. He also avers, at one point, that he is unmarried and without any dependents (further on, he states that he wishes to use the proceeds to “...to better provide for me and my dependents’ future...”). No information is provided as to Respondent’s monthly expenses of living and whether or not he is capable of meeting the same. The Court is unable to determine his level of maturity or his physical or mental capacity but, based upon the foregoing, presumes that he must be of at least average intelligence and have some level of physical capacity. Second, the stated intended use of the proceeds is “...to better provide for me and my dependents’ future by enabling me to pay for necessary dental procedures.”. The Court is hard-pressed to find severe hardship (indeed, any hardship at all) in this matter based upon the submissions herein. Third, in light of the paucity of information provided, the Court is unable to assess Respondent CASEY’S level of financial sophistication. Fourth, Respondent CASEY states that he is waiving the right to seek independent financial and legal advice in connection with this proposed transaction. However, it is apparent to this Court that this document was prepared by Petitioner BOFI in furtherance of this proposed transaction and this Court really has no way to determine the voluntariness or lack thereof with respect to this important right belonging to Respondent CASEY. Moreover, as Respondent CASEY is clearly not represented by counsel, this matter is moving forward upon a Petition and other documents all of which have been prepared either by Petitioner BOFI or its counsel of record.. This seems facially to put Respondent CASEY at a distinct disadvantage in this transaction. In addition, it appears that in on December 4, 2006, in Nassau County under index number 013837/06, Respondent CASEY transferred payments aggregating perhaps \$ 100,000.00 to an entity known as Structured Settlements LP. This Court has not been advised as to the amount for which the same were transferred nor the use of the funds.

Viewing the instant application *in toto*, this Court finds the confluence of all of the enumerated factors to be, at the very least, greatly troubling. As to the issue of whether or not the transaction is fair and reasonable, the Court finds the Petition to be severely wanting. Respondent CASEY is entitled to receive future payments aggregating of \$ 652,278.40. The discounted present value of those payments, according to Petitioner BOFI’S calculation, stands at \$ 466,271.07. Petitioner BOFI offers to pay to Respondent CASEY the gross amount of \$ 15,000.00 in exchange for these payments, representing but 3.22% of the discounted present value and only 2.30% of the full value of the payments. This, on its face and without more, seems unconscionable and, lacking any further illumination because it is, perhaps, unjustifiable and insupportable.

In Matter of Settlement Funding of New York LLC [Cunningham] 195 Misc 2d 721 (Sup. Ct. Rensselaer County, 2003), the Court declined to approve the proposed transfer of \$ 151,701.75 for the sum of \$ 75,000.00. That Court also found that the combination of high interest and high costs of transfer were not fair and reasonable. In Matter of 321 Henderson Receivables LP [D'Amore] 2005 NY Slip Op 51479U, 9 Misc 3d 1110A (Sup. Ct. Kings County, 2005), the Court declined to approve a transfer of a payment of \$ 137,350.00, with a discounted present value of \$ 59,297.87 in exchange for payment of \$ 10,000.00, finding the same as not fair and reasonable. Once again, in Matter of Settlement Capital Corporation [Ballos] 1 Misc 3d 446 (Sup. Ct. Queens County 2003) the Court declined to approve a transfer of the right to receive a payment of \$ 125,000.00 in exchange for the gross sum of \$ 39,000.00.

This Court is compelled to conclude, after an exhaustive review of all of the submissions, that Petitioner BOFI'S application is motivated primarily by cupidity. The Petition and attendant papers are rife with the indicators of conduct and motivation which leave a highly questionable and greatly disturbing impression. In short, the submissions portray what appears to be nothing more than an illusion of good faith and fair dealing in this proposed transaction.

Based upon all of the foregoing factors, this Court is driven to the inescapable conclusion that the proposed transfer herein is neither in the best interests of Respondent CASEY nor is it fair and reasonable. Accordingly, the Petition is denied and this proceeding is dismissed.

It is, therefore,

ORDERED that the within Petition is denied and this proceeding is dismissed in its entirety; and it is further

ORDERED that counsel shall serve a copy of this Order with Notice of Entry upon all parties herein, within twenty one days following entry thereof by the Clerk.

Dated: January 17, 2014  
Riverhead, New York

ENTER:

  
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JEFFREY ARLEN SPINNER, J.S.C.

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FINAL DISPOSITION

SCAN

NON-FINAL DISPOSITION

DO NOT SCAN