

## **Structured Settlements: Beware the Vultures**

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Structured settlements are lawsuit settlements - usually from personal injury or accident cases - paid out over a time period of months or years. "Structure" refers to how the payments are made. There is infinite flexibility in making a payment schedule for a structured settlement.

The purpose of a structured settlement is to protect the accident victim from him or herself; most average people, especially after being seriously hurt or injured in an accident, might not be able to preserve a large monetary recovery that might have to last them a lifetime. So, for the benefit of such persons and their family or dependents, and to ensure their long-term financial security, money may be paid out to them over time.

Now come along outside companies that offer a lump sum of cash to persons receiving payments pursuant to a structured settlement. We've all seen the television commercials: "It's your money and you should have it now." These companies buy the right to the accident victim's future payments with a single, discounted, lump sum payment.

New York State acted to protect accident victims from these slick marketers, by making a law (statute) known as the "Structured Settlement Protection Act." This law says that to sell a structured settlement, the person receiving the payments needs the permission of a judge. Most important under the Structured Settlement Protection Act is whether the transaction, including the discount rate and the amount of fees and expenses, is fair and reasonable and whether the transaction is in the best interest of the payee.

There are not a lot of cases under this law because judges make sure the sale is fair to the accident victim, so many of the companies that buy structured settlement can't rip people off, so why bother? But once in a while they do legitimately go through the court process, which brings me to today's subject, a case decision just out of the Bronx, written by Justice Alexander W. Hunter, Jr., entitled Matter of Medina.

A company named Structured Asset Funding, LLC asks Justice Hunter to allow it to buy Ms. Medina's future payments due to her under a structured settlement. This case tells us little about Ms. Medina's accident or how she came to get the money, but we are told that she has been getting payments on and off since 1993 and most recently received an annual (yearly) payment of \$16,900 on June 5, 2008. We are also told that she will get one payment of \$55,000 on June 5, 2012 and one payment of \$87,500 on June 5, 2017. It is the first of these two future payments (\$55,000) that Ms. Medina is trying to sell. Now Dear Readers, please pay attention to the math because we are facing a concept known in economist-speak as "the Time Value of Money."

Put simply, a dollar today is worth more than a dollar tomorrow. So Structured Asset Funding, LLC tells Justice Hunter that Ms. Medina's future payment of \$55,000 is worth, today, \$47,296.71. And Structured Asset Funding LLC wants to buy Ms. Medina's \$55,000 future

payment (that today is worth \$47,296.71) for \$31,500. While the judge believes that the amount that Structured Asset Funding LLC wants to pay to Ms. Medina is fair, he blocks the payment finding that he cannot "state with any certainty whether or not the transaction is in the best interest of the payee." Return filed at JDSUPRA™  
http://www.jdsupra.com/post/documentViewer.aspx?fid=c183a0d2-7283-4cc3-9230-abb2bd847b1b

Why? Because Ms. Medina wants to use the money to move and buy furniture, but does not indicate if she can afford to keep paying her rent wherever she's going.

I'll let Justice Hunter's words speak:

"Ms. Medina states in her affidavit that she seeks to transfer to the payor, the lump sum payment of \$55,000 that is payable to her on June 5, 2012. In her affidavit in support of the petition, Ms. Medina states that she is twenty (20) years old, she is unmarried and has two (2) dependents one is four (4) years old and the other is three (3) months old. Ms. Medina states that she intends to use the money that she receives from the transfer to find a place of her own as she and her children are currently living at her aunt's house and she wishes to relieve her aunt of the burden. She also plans to use some of the proceeds to purchase furniture for herself and her children and to pay for the living expenses of her children.

However, Ms. Medina does not indicate whether or not she is employed or otherwise receives a monthly income in order to enable her to pay her monthly rent, utilities and other household expenses. Moreover, she does not indicate how long she intends to live off of the \$31,500 she will be receiving from said transfer. She also recently received an annual payment of \$16,900 on June 5, 2008 that could have been applied toward relocating to a place of her own.

Accordingly, the application for the transfer of the structured settlement payment is denied without prejudice and with leave to renew upon submission of a more detailed affidavit from Ms. Medina with respect to her monthly household income and the amount of rent she intends to pay on a monthly basis in order for this court to determine whether or not the transfer is in the best interest of the payee taking into account the welfare and support of her dependents."

Comment: So Justice Hunter is protecting Ms. Medina and her two children by preventing the sale of her future \$55,000 lump sum payment, inviting her to come back to court and tell him more to convince him to change his mind.

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