

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK**

**METROPOLITAN LIFE INSURANCE
COMPANY,**

Plaintiff,

v.

**1:08-CV-0022
(GLS\DRH)**

**UNITED STATES OF AMERICA, et al.,
STRATCAP INVESTMENTS, INC.
BETTY MARTINEZ-LEE
FRANKIE LEE**

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

HODGSON, RUSS LAW FIRM
677 Broadway, Suite 31
Albany, NY 12207

CHRISTIAN J. SOLLER, ESQ.

FOR THE DEFENDANTS:

For the United States:

HON. GLENN T. SUDDABY
United States Attorney
James T. Foley U.S. Courthouse
445 Broadway
Albany, New York 12207-2924

BARBARA D. COTTRELL
Assistant United States Attorney

U.S. Department of Justice
Civil Division, Torts Branch
Ben Franklin Station, Box 888
Washington, DC 20044

LAWRENCE EISER
Trial Attorney

For Stratcap Investments, Inc.:
The Dunn Law Firm PLLC
99 Pine Street, Suite 210
Albany, NY 12207

JILL A. DUNN, ESQ.

For Betty Martinez-Lee:

No appearance

For Frankie Lee:

No appearance

Gary L. Sharpe
U.S. District Judge

CONSENT JUDGMENT

1. This interpleader action was brought pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P.. 22. The Court has jurisdiction pursuant to 28 U.S.C. § 1345.

2. Plaintiff Metropolitan Life Insurance Company (“MetLife”), defendant United States of America (“United States”), and defendant Stratcap Investment Services (“Stratcap”) have all appeared in this action through their attorneys. The United States has filed an Answer to the Amended Interpleader Complaint and a cross-claim against the remaining defendants for declaratory relief. Stratcap has filed an Answer to the Amended Interpleader Complaint, a counterclaim against MetLife, which MetLife answered, and cross-claims against defendants Betty Martinez-Lee (“Martinez-Lee”) and Frankie Lee (“Frankie Lee”). Stratcap has also filed an Answer to the United States’ cross-claims.

3. Defendants Martinez-Lee and Frankie Lee were served in this action with all pleadings referenced in paragraph 2 of this Consent Judgment and have not appeared or answered the pleadings in any way.

4. On May 21, 2002, Betty Martinez-Lee and Frankie Lee (hereinafter “FTCA Plaintiffs”) entered into a Settlement Agreement with the United States to resolve a claim, asserted pursuant to the Federal Tort Claims Act, 28 U.S.C. § 1346(b) and 2671 *et seq.*, arising from the wrongful death of their infant son. The Settlement Agreement is appended as Exhibit A to this Consent Judgment.

5. The Settlement Agreement, at ¶ 2.1.1(d), obligated the United States to pay \$501,310.00 to Interpleader Plaintiff, Metropolitan Life Insurance Company (“MetLife”) for the purchase of an annuity contract, which would provide certain future periodic payments to FTCA Plaintiffs at a specific schedule into the future.

6. The Settlement Agreement provides, at ¶ 2.2.1, that MetLife “shall pay to the Annuitants [Betty Martinez-Lee and Frankie Lee] the periodic benefits *in the amount and on the dates specified* in Addendum I and Addendum II.”

7. The Settlement Agreement provides, at ¶ 2.4.1 that, “The obligation of the Annuity Company [MetLife] to make each periodic payment specified in Addendum I and Addendum II shall be discharged upon the mailing of a valid check in the amount of the payment that is due to the address designated by the person or entity to whom the payment is required to be made under this Agreement.”

8. The Settlement Agreement provides, at ¶ 2.5, that “The Annuities shall be owned solely and exclusively by the United States.”

9. The Settlement Agreement provides, at ¶ 2.6(iii), that “The Annuity Company shall at all times remain the sole source from which the [FTCA] Plaintiffs shall receive the future payments provided for in this Agreement...”

10. The Settlement Agreement provides, at ¶ 2.13, “Additional Documents Necessary to Implementation. The parties hereto agree to cooperate fully, to execute any and all supplementary documents, and to take all additional action, which may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.”

11. Pursuant to the Settlement Agreement, the United States purchased Annuity number 8298, Certificate Numbers 76186 and 76187 (“the Annuity”) from the Interpleader Plaintiff, Metropolitan Life Insurance Company (“MetLife”). The Annuity Contract is appended as Exhibit B. The terms of the annuity contract require payment of certain payments each month by MetLife, as well as additional payments at five year intervals into the future. The owner of the annuity is the United States. The Annuity Contract states, “The Owner will have the right at any time to designate the payee, including the Beneficiary, to whom benefits are payable under the annuity.” Exhibit B. The Annuity Contract provides no right to any other party to designate to whom annuity payments may be sent, other than the United States as Owner. Exhibit B.

12. The Annuity Contract provides, at page 2, “This certificate and the payments provided under it are *nonassignable* and will be exempt from the claims of creditors to the maximum extent permitted by law.”

13. The Annuity Contract provides, in a specific Endorsement, that, “This certificate is not assignable. It cannot be transferred, assigned or pledged as collateral for a loan. Payments under this certificate cannot be changed or accelerated and paid before the payment due date.”

14. Notwithstanding the above provisions of the Settlement Agreement and Annuity Contract, on or about October 24, 2003, Frankie Lee entered into a “structured settlement annuity sale and assignment agreement” with Stratcap Investments, Inc. (“Stratcap”) under

which Lee attempted to assign or sell his rights to the future periodic payments due under the U.S.-owned annuity to Stratcap in exchange for a lump sum payment. In addition, notwithstanding the above provisions of the Settlement Agreement and Annuity Contract, on or about July 1, 2002, Betty Martinez-Lee entered into a “structured settlement annuity sale and assignment agreement” with defendant, Stratcap Investments, Inc. (“Stratcap”) under which Martinez-Lee attempted to assign or sell her rights to the future periodic payments due under the U.S.-owned annuity to Stratcap in exchange for a lump sum payment.

15. In the respective structured settlement annuity sale and assignment agreements, which were drafted by Stratcap, Betty Martinez-Lee and Frankie Lee each made various warranties and representations, including but not limited to warranting that they had the entire right, title and interest in and to the payments and that they had the full power and authority to enter into and perform their obligations under such agreements, without obtaining the consent of any third party to do so. Betty Martinez-Lee and Frankie Lee each agreed to hold harmless, defend and indemnify Stratcap against any and all claims, losses, damages or expenses, including attorneys fees, which Stratcap might incur as a result of any breach or failure of any representation or warranty or as a result of any breach of any term or provision of the agreements. Both Martinez-Lee’s and Lee’s agreements with Stratcap were in violation of the Settlement Agreement and Annuity Contract.

16. Pursuant to the foregoing structured settlement annuity sale and assignment agreements, the New York State Supreme Court, Schenectady County, issued three Orders dated December 5, 2003 (“Order #1”), November 4, 2004, (“Order #2”) and April 21, 2008 (“Order #3”), approving the transfers of periodic payments from Lee and Martinez-Lee to Stratcap and confirming the contractual obligations of Betty Martinez-Lee and Frankie Lee to Stratcap.

Thereafter, pursuant to the structured settlement annuity sale and assignment agreements and the aforementioned state court orders, Stratcap requested that MetLife redirect the periodic payments from Lee and Martinez-Lee to Stratcap.

17. Upon receipt of MetLife's written acknowledgments of its receipt of the state court orders, Stratcap released \$101,144.00 to Frankie Lee and \$22,000.00 to Betty Martinez-Lee in accordance with the terms of the structured settlement annuity sale and assignment agreements and the state court orders, but in violation of the Settlement Agreement and Annuity Contract.

18. The orders of the New York state court approving the transfer of payment rights from Frankie Lee and Betty Martinez-Lee to Stratcap are void because they were entered without a waiver of sovereign immunity and without subject matter jurisdiction, and are otherwise unenforceable as against the United States to the extent that the state court orders purport to change the payee under the annuity contract, an act that is solely and exclusively the right of the United States to control as owner of the contract.

19. Now, whereas, default judgments have been entered in this action against defendants Betty Martinez-Lee and Frankie Lee in favor of MetLife on January 26, 2009 and in favor of Stratcap on July 28, 2009, and whereas, Stratcap desires to terminate the instant federal interpleader action in order to limit further litigation expense and to resolve the dispute with the United States. Within 30 days of entry of this consent judgment, Stratcap will move to vacate the above-referenced state court Orders with prejudice.

WHEREFORE, upon consideration of the record in this matter, and with consent of the plaintiff Metropolitan Life Insurance Company and defendants United States of America and

Stratcap Investments, Inc. and upon the default of defendants Betty Martinez-Lee and Frankie Lee, it is this 1st day of December, 2009, hereby

ORDERED that Judgment on the Amended Interpleader Complaint is hereby entered in favor of MetLife and the United States, and against Stratcap Investments, Inc., and it is further

ORDERED that Judgment on the Counterclaim and Cross-Claims filed by the United States is hereby entered in favor of the United States and against Metropolitan Life Insurance Company, Stratcap Investments, Inc., Betty Martinez-Lee and Frankie Lee; and it is further

ORDERED the funds interpleaded in this case be paid to Frankie Lee and Betty Martinez-Lee pursuant to the terms of the Settlement Agreement entered into between Lee and Martinez-Lee with the United States, Exhibit A, and the Annuity Contract entered into between the United States and MetLife, Exhibit B, and the express direction of the United States as is its exclusive right under those contracts; and it is further

ORDERED that MetLife shall direct all future payments under the subject annuity contract to the person designated by the United States, in accordance with the Settlement Agreement and Annuity Contract; and it is further

ORDERED that nothing in this Consent Judgment shall be construed as a finding of wrongdoing or bad faith on the part of any of the parties who have given their consent to entry of this judgment; and it is further

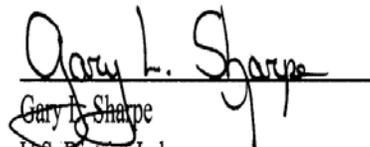
ORDERED that the stay of all State and Federal court proceedings regarding the payments at issue is lifted solely for the purpose of allowing Stratcap to move to vacate the aforementioned Order #1, Order #2 and Order #3 of the New York state court approving the transfers of periodic payments from Lee and Martinez-Lee to Stratcap, and allowing MetLife to

withdraw its appeal of those Orders. In the event said Orders are not vacated, the stay shall be reinstated; and it is further .

ORDERED that Stratcap shall pay MetLife, within five (5) days of entry of this Consent Judgment, the sum of ten thousand (\$10,000.00) dollars, as reimbursement to MetLife for the costs MetLife incurred in prosecuting this Federal interpleader action.

IT IS SO ORDERED.

Albany, New York
December 1, 2009


Gary L. Sharpe
U.S. District Judge