

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMERICAN INTERNATIONAL LIFE
ASSURANCE COMPANY OF NEW YORK,

Plaintiff,

v.

C.A. No. 07-5378

THE UNITED STATES OF AMERICA,
J.G. Wentworth S.S.C.
Dawnicka Lowry, individually and as Administrator:
of the Estate of Ronald R. Lowry, Sr.
Ronald R. Lowry, Jr.
Brandie L. Lowry
Joshua L. Lowry

Defendants.

FILED
DEC 17 2010
MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

CONSENT JUDGMENT

1. This interpleader action was brought by American International Life Assurance Company of New York ("AI Life") pursuant to 28 U.S. § 1335 and Federal Rule of Civil Procedure 22 (the "Interpleader Action").
2. In 1986 Ronald R. Lowry, Sr. ("Mr. Lowry") filed suit pursuant to the Federal Torts Claims Act against the United States in the Federal District Court for the Central District of California.
3. On September 5, 1986, Mr. Lowry entered into a Stipulation for Compromise, Settlement and Order thereon (the "Stipulation") in order to resolve the lawsuit. The Stipulation for Compromise, Settlement and Order thereon memorializing that agreement is attached as Exhibit A to this consent judgment.

4. The Stipulation at paragraph 4 obliged the United States to purchase an annuity contract from AI Life which would provide certain future monthly payments to Mr. Lowry on a specific schedule into the future.
5. The annuity described in the Stipulation was to provide payments of thirty-five hundred dollars (\$3,500.00) monthly for the life of Mr. Lowry, for twenty years certain.
6. The Stipulation provided that "The defendant [United States] will own the annuity and not the plaintiff, and neither plaintiff nor his Estate will have any ownership rights in or to said annuity". Exhibit A at 8.
7. The Stipulation provided that "Neither plaintiff nor his Estate has any right to accelerate, defer, increase or decrease the amount of any payment to be made under this Stipulation". Exhibit A at 9.
8. The United States purchased annuity contract A-2483 ("the Annuity") from AI Life as required by the terms of the Stipulation. The Annuity contract is attached as Exhibit B. The Annuity provides that the United States is the owner of the Annuity and AI Life is the issuer of the Annuity.
9. The schedule in the Annuity, in accordance with the Stipulation, provides for the following payments: Monthly payments of \$3,500.00 each, commencing on October 15, 1986, and continuing through and including September 15, 2006, and thereafter for the life of Mr. Lowry (the "Periodic Payments");
10. Mr. Lowry died intestate on August 1, 1991, before the first life-contingent Periodic Payment would have been due under the Annuity. The only payments at issue in this matter are the Periodic Payments to be made up to September 15, 2006;

11. On December 21, 1992, the Circuit Court of the Third Judicial District of Madison County, Illinois named Mr. Lowry's widow Lydia Lowry, as personal representative of his Estate. On that same date, the same Court issued an Order Finding Heirship which decreed that Lydia Lowry, and the children of Mr. Lowry, namely Dawnicka, Ronald Jr., Joshua and Brandie were the sole heirs of Mr. Lowry and each was entitled to share in the settlement of the estate;
12. Despite the language of the Stipulation and Annuity described above, Lydia Lowry, between 1996 and 1998, entered into a series of four agreements (the "Purchase Agreements") with Interpleader Defendant J.G. Wentworth ("Wentworth") whereby, in exchange for a lump sum payment, Ms. Lowry purported to assign to Wentworth a portion of the monthly payment under the Annuity. AI Life and the United States were not notified of the Purchase Agreements at the time they were made;
13. With respect to the fourth Purchase Agreement dated February 26, 1998, Lydia Lowry petitioned the Circuit Court of the Third Judicial Circuit, Madison County, Illinois for approval of this agreement pursuant to state law. Neither, Wentworth nor Lydia Lowry served the United States nor AI Life with a copy of the Petition;
14. On March 27, 1998, the Circuit Court of the Third Judicial Circuit, Madison County, Illinois issued an order approving the Purchase Agreement of February 26, 1998.
15. Lydia Lowry died intestate on October 16, 2003.
16. Upon being notified of Lydia Lowry's death, AI Life suspended the following Periodic Payments under the Annuity: Monthly payments of \$3,500.00 each, commencing on December 15, 2003, and continuing through and including September 15, 2006 (the

'Suspended Payments');

- 17. The total amount of the Suspended Payments is \$119,000.00.
- 18. On September 18, 2006, Circuit Court of the Third Judicial Circuit, Madison County, Illinois, entered an order reopening the estate of Ronald Lowry, Sr. and appointed Dawnicka Lowry as legal representative for that Estate.
- 19. On or about September 13, 2007, Ms. D. Lowry as the Administrator of the Estate of Ronald Lowry, Sr. filed a Petition for Citation in the Circuit Court for the Third Judicial Circuit, Madison County, Illinois, captioned *In the matter of the Estate of Ronald R. Lowry, Sr., deceased, by Dawnicka L. Lowry, Administrator v. AIG Life Insurance Company*, Case No. 1992-P-688 (the "Citation in Probate Court") alleging that AIG Life Insurance Company¹ has the personal property of the Estate because AIG Life Insurance Company has "steadfastly refused" to pay the Estate the proceeds of the Annuity. On June 2, 2009, that same Court stayed the Citation proceeding pending resolution of this Interpleader Action;
- 20. The Purchase Agreements made between Lydia Lowry and Wentworth were invalid because Lydia Lowry was not the owner of the Annuity and did not have the legal authority to assign the payments under it;
- 21. The order of March 27, 1998, by the Circuit Court of the Third Judicial Circuit, Madison County, Illinois approving the Purchase Agreement of February 26, 1998, between Lydia Lowry and Wentworth was void and unenforceable against the United States of America

¹ Ms. D. Lowry improperly named AIG Life Insurance Company as a party to the Probate Action. AIG Life insurance company is not the issuer of the Annuity.

because the court lacked subject matter jurisdiction and the United States had not waived its sovereign immunity. The state court lacked authority to change the payee under the Annuity, an act that was exclusively within the discretion of the United States;

WHEREFORE, upon consideration of the record in this matter, and with the consent of the parties is it this 15th day of Dec 2010, hereby:

ORDERED that Judgment on the Amended Interpleader Complaint hereby be entered in favor of the United States and against Wentworth and it is further;


ORDERED that the Suspended Payments in this case be paid to 'Feldman Shepherd Wohlgelernter Tanner Weinstock & Dodig Attorney Trust Account' as attorneys for the Estate of Ronald Lowry, Sr., c/o Mark Tanner, Esquire, Feldman Shepherd Wohlgelernter Tanner Weinstock & Dodig, 1845 Walnut Street, 25th Floor, Philadelphia, Pennsylvania 19103, pursuant to the terms of the Stipulation entered into by Mr. Lowry and the United States in the original tort action in 1986 and the Annuity purchased by the United States from AI Life, and the express direction of the United States as is its exclusive right under these contracts. It is further


ORDERED that the effect of this consent judgment shall be limited to the facts and circumstances of this case only. It is further;

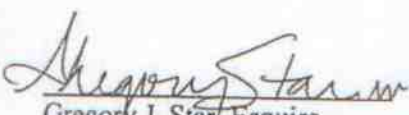
ORDERED that upon the issuance of the Suspended Payments as stated above, the judgment is marked satisfied. It is further;


ORDERED that the all remaining claims relating to the Interpleader Action, including counterclaims and cross-claims asserted herein, as well as any and all claims relating to the Periodic Payments, shall be dismissed with prejudice and the case marked closed; It is further;

ORDERED that Dawnicka Lowry shall take all action necessary to dismiss the Citation in Probate Court with prejudice.


Mark Tanner Esquire, Attorney for the Estate of Ronald Lowry, Dawnicka Lowry Administrator,
and Dawnicka Lowry, Brandie Lowry, Joshua Lowry and Ronald Lowry Jr.



Richard Ochroch, Esquire
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Reviewed and approved
Jean K. Lawrence
Margaret L. Hutchinson
Chief, Civil Division

APPROVED BY THE COURT:


HONORABLE PETRESE B. TUCKER
Judge, United States District Court