

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 53

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MILLICENT MENDEZ, MILLICENT MENDEZ, ASHANTI
CUMMINGS,

Plaintiff,

- v -

EDGAR A HARVEY-LEWIS, NEW YORK LIFE
INSURANCE COMPANY, BANK OF AMERICA, N.A.,
RAYAN WILSON

Defendant.

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INDEX NO. 652459/2022

MOTION DATE N/A

MOTION SEQ. NO. 004

**DECISION + ORDER ON
MOTION**

HON. ANDREW BORROK:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 137, 138, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, the Plaintiffs’ motion for summary judgment must be granted.

In short, this is a case involving Edgar Harvey-Lewis’ blatant manipulation and undue influence over Melonie Sterling when she lacked capacity. As discussed in the Prior Decision (hereinafter defined), at a time when she was most vulnerable and did not know who Mr. Harvey-Lewis was, he caused her to change her beneficiary from Millicent Menendez to himself. Thus, and as discussed more completely below, **the change in beneficiary designation to Mr. Edgar Harvey-Lewis is void.** Millicent Mendez is the sole and proper beneficiary of Melonie Sterling’s 401K plan, savings account, life insurance policy, and the Barrington Life Insurance Policy.

Reference is made to the Decision and Order of this Court dated October 20, 2022 (the **Prior Decision**; NYSCEF Doc. No. 81). In the Prior Decision, the Court found, among other things, that (i) Ms. Sterling was not lucid when she allegedly transferred funds to Mr. Harvey-Lewis, including changing the beneficiary designation on her life insurance policy and the Barrington Life Insurance Policy (she thought Mr. Harvey-Lewis was her cousin not life partner on the audio recording the court reviewed which was made when she changed such beneficiary designations), (ii) Mr. Harvey-Lewis's affidavit contained a number of clearly false statements, and (iii) Mr. Harvey-Lewis's testimony of his relationship with Ms. Sterling underscores how vulnerable she was and how easy it was for him to prey on her (*id.*, at 3).

The findings of this Court in the Prior Decision are bolstered by notes in Ms. Sterling's hospice records throughout the month of April 2022 indicating (i) that Ms. Sterling demonstrated confusion, (NYSCEF Doc. No. 87, ex. C, at 79, 88, and 91) (ii) Mr. Harvey-Lewis held himself out to be Ms. Sterling's husband, which he was not, and (iii) Mr. Harvey Lewis attempted to have Ms. Sterling transferred to a long-term facility (*id.*, at 69). The record demonstrates that during this period, when Ms. Sterling lacked capacity, Ms. Sterling changed the beneficiary designation on her 401K Plan and savings account as well such that these changes too are void.

Thus, the Plaintiffs are entitled to summary judgment that (i) the change in the beneficiary status on Ms. Sterling's 401K plan, savings account, life insurance policy, and the Barrington Life Insurance Policy are void because Ms. Sterling lacked capacity to make such changes and was unduly influenced by Mr. Edgar-Lewis, (ii) any funds, assets, or property from Ms. Sterling's 401K plan, savings account, life insurance policy, and the Barrington Life Insurance Policy taken

by Mr. Edgar-Lewis must be returned because they were improperly converted and he was unjustly enriched thereby, and (iii) Mr. Edgar-Lewis improperly interfered with Ms. Mendez's economic interests and benefits. The Plaintiffs are not however entitled to summary judgment on their claim sounding in fraud because they did not rely on statements or omissions made by the defendant.

In the Prior Decision, the Court, among other things, enjoined New York Life and Bank of America from making any payments to Mr. Harvey-Lewis and prevented Mr. Harvey-Lewis from transferring any money and/or assets to himself or spending any money that he had received. If he has done so after this Court issued the Prior Decision, the Plaintiffs may bring a motion seeking to hold him in contempt of Court. If Mr. Harvey-Lewis has received or taken any such monies, assets, or benefits, including the funds he transferred to himself prior to the issuance of the Prior Decision, he must turn over all such money immediately to the Plaintiffs and/or repay the Plaintiffs for any such money spent. A JHO/Special Referee shall be appointed to determine the Plaintiffs' damages.

For completeness, Mr. Harvey-Lewis' arguments in opposition to the motion all fail. The motion is not procedurally deficient because the answer was annexed to the reply papers (*Montalvo v Episcopal Health Servs., Inc.*, 172 AD3d 1357, 1359 [2d Dept 2019]). Mr. Harvey-Lewis has waived the defense of lack of standing because he failed to assert such defense in his answer (CPLR 3211[e]; *US Bank Natl Assn v Thomas*, 156 AD3d 557, 558 [1st Dept 2017]). Even if this were not the case, the Plaintiffs have demonstrated an actual stake in the matter being adjudicated and the existence of a justiciable controversy, such that they have standing

(*Lucker v Bayside Cemetery*, 114 AD3d 162, 169 [1st Dept 2013], citing *Schlesinger v Reservists Comm to Stop the War*, 418 US 208, 220-221 [1974]). Mr. Harvey-Lewis's self-serving affidavits submitted in opposition to this motion are insufficient to raise issues of fact for trial (*Caraballo v Kingsbridge Apt Corp*, 59 AD3d 270, 270 [1st Dept 2009]), they would be barred by CPLR 4519 and are not credible given his blatant misstatements regarding Ms. Sterling's lucidity which were contradicted by the very recording he proffered to this Court. Thus, the motion for summary judgment must be granted.

It is hereby ORDERED that the motion for summary judgment is granted; and it is further

ORDERED that the sole beneficiary of Melonie Sterling's 401K plan, savings account, life insurance policy, and the Barrington Life Insurance Policy is Millicent Mendez; and it is further

ORDERED that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to determine the Plaintiffs' damages, which are hereby submitted to the JHO/Special Referee for such purpose; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at

www.nycourts.gov/suptctmanh at the “References” link), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further

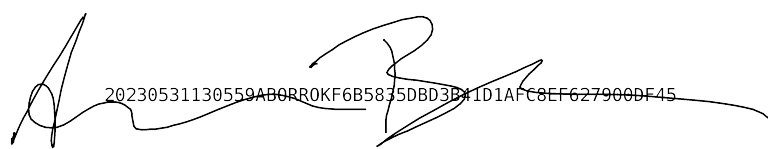
ORDERED that counsel shall immediately consult one another and counsel for plaintiff/petitioner shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by e-mail an Information Sheet (accessible at the “References” link on the court’s website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the plaintiffs shall serve a proposed accounting within 24 days from the date of this order and the defendants shall serve objections to the proposed accounting within 20 days from service of plaintiffs’ papers and the foregoing papers shall be filed with the Special Referee Clerk prior to the original appearance date in Part SRP fixed by the Clerk as set forth above; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules).



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5/31/2023
DATE

ANDREW BORROK, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE