

Reversed and Rendered and Memorandum Opinion filed April 21, 2009.



In The

**Fourteenth Court of Appeals**

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NO. 14-07-00880-CV

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**SYMETRA NATIONAL LIFE INSURANCE COMPANY AND SYMETRA LIFE  
INSURANCE COMPANY, Appellants**

**V.**

**RAPID SETTLEMENTS, LTD., Appellee**

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**On Appeal from the County Civil Court at Law No. 1  
Harris County, Texas  
Trial Court Cause No. 871097**

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**MEMORANDUM OPINION**

Appellants, Symetra National Life Insurance Co. and Symetra Life Insurance Co. (collectively "Symetra"), obligors on structured settlement payments, appeal from the trial court's confirmation of an arbitration award directing Symetra to make future payments to appellee, Rapid Settlements, Ltd., instead of to the original payee. In its first six issues, Symetra argues that the trial court erred as a matter of law in confirming the arbitration award because: (1) although the Texas Structured Settlement Protection Act (SSPA) requires court approval of all structured payment transfers, Rapid has not received approval of the transfer

at issue in this case; (2) the transfer of workers' compensation payments is prohibited by statute; (3) an arbitration award cannot bind a nonsignatory to the arbitration clause such as Symetra; (4) the structured payment transfer agreement, along with its arbitration clause, was not effective absent court approval; (5) the arbitrator exceeded his authority by violating public policy and purporting to bind a nonsignatory to the results of the arbitration; and (6) the arbitrator committed a gross mistake or exhibited manifest disregard of the law by ordering specific performance of the transfer agreement based on breach of a \$1,000 promissory note. In its seventh issue, Symetra contends that the trial court abused its discretion in excluding evidence of Rapid's application for approval of the transfer filed in Guadalupe County. We reverse and render judgment vacating the arbitration award.

### **I. Background**

In 1996, as part of a settlement in a workers' compensation lawsuit, Paul Patterson became entitled to structured settlement payments. Currently, Symetra is the obligor on these payments. In January 2005, Patterson executed a transfer agreement with Rapid, under which Rapid agreed to pay Patterson a lump sum, and Patterson agreed to assign to Rapid the right to receive future periodic payments. The agreement contained an arbitration clause through which the parties agreed to arbitrate any disputes arising "under the agreement." In December 2005, Patterson signed a promissory note, which also contained an arbitration clause. Under this note, Rapid loaned or advanced Patterson \$1,000, which Patterson agreed to repay with interest by the "maturity date," defined as "January 29, 2006, or earlier upon the approval of the Transfer Agreement."<sup>1</sup>

According to Symetra, on January 26, 2006, Rapid filed an "Application for Approval of a Transfer of Structured Settlement Payment Rights" in a Guadalupe County court at law, seeking court approval of the assignment of Patterson's right to such payments to Rapid. As

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<sup>1</sup> In its brief, Rapid asserts the amount advanced to Patterson was \$1,000. The promissory note obligated Patterson to pay Rapid the "principal amount" of \$1,500 plus interest. Neither the arbitration award nor the trial court's judgment specify an amount for this transaction.

explained in greater detail below, section 141.004 of the SSPA requires court preapproval of any transfer of structured settlement payments before such transfer can be effective. Tex. Civ. Prac. & Rem. Code § 141.004. Symetra asserts that it objected to the transfer in the Guadalupe County court and, to date, the court has not approved the transfer. Rapid acknowledges that it has never received court approval of the transfer from Patterson.

In June 2006, Rapid filed an arbitration demand, asserting that Patterson had breached both the transfer agreement and the promissory note. Specifically, Rapid alleged that Patterson breached the transfer agreement by attempting to sell the right to receive future payments to a third party and defaulted on the promissory note by failing to timely repay the advanced funds. Rapid and Patterson then settled upon an agreed arbitration award, which was subsequently signed by the arbitrator, Jeffrey Newport, whom Rapid has used in other similar arbitrations. The agreed award recites that the “transfer agreement . . . is a valid, binding, and enforceable agreement” and that Patterson breached the agreement. It further states that Patterson had not “otherwise sold, Garnished [sic], encumbered, or pledged the Garnished Payments.” It represents that Symetra was notified of the arbitration proceedings but “chose not to appear” and that Symetra would “bear no relevant or material burden whatsoever by changing the address on its computer records and paying the monies as ordered herein to Rapid’s assignee rather than to Patterson.” Finally, under the terms of the agreed award, Rapid became obligated to make a \$40,000 lump sum payment to Patterson and then, if Patterson did not pay it back plus \$28,750 as damages by August 31, 2006, Rapid would be entitled to garnishment of the structured payments from Symetra to Patterson. In anticipation of Patterson’s failure to pay and the resulting garnishment, the award orders Symetra to make future structured payments (“Garnished Payments” according to the award) to Rapid’s assignee, RSL-5B-IL, Ltd., rather than Patterson, unless it (Symetra) was to receive a contrary order from the arbitrator.

On August 11, 2006, Rapid filed an original petition in Harris County Civil Court at Law # 1, seeking confirmation of the arbitration award. On the same day, the trial court

signed a judgment confirming the award and ordering Symetra to make future structured payments to Rapid's assignee. Symetra then intervened in the trial court, filing a "Motion for New Trial and/or to Set Aside or Vacate." The court initially set aside the earlier judgment confirming the arbitration award as it pertained to Symetra but not as it pertained to the assignment from Patterson to Rapid. Subsequently, after a hearing on Rapid's motion to confirm the arbitration award, the court signed a final judgment on June 27, 2007, confirming the award "in its entirety." Also in the judgment, the court ordered Symetra to issue a "formal acknowledgment letter of the transfer" and make future structured settlement payments to Rapid's assignee. Symetra now appeals from the confirmation of the award.

## **II. Discussion**

### **A. Symetra's Arguments**

We begin by examining Symetra's first and fifth issues in which it contends that the trial court erred in confirming the arbitration award because (1) Rapid failed to obtain the requisite court approval under the SSPA for the transfer of the structured settlement payments from Patterson, and (2) the arbitrator violated public policy by awarding a transfer of structured settlement payments without court preapproval. We consider a trial court's confirmation of an arbitration award under a de novo standard of review. *Providian Bancorp Servs. v. Thomas*, 255 S.W.3d 411, 414 (Tex. App.—El Paso 2008, no pet.). While the review of an arbitration award is normally exceedingly narrow, courts should not confirm an award if that award is contrary to public policy. *See Apache Bohai Corp., LDC v. Texaco China BV*, 480 F.3d 397, 401 (5th Cir. 2007); *Myer v. Americo Life, Inc.*, 232 S.W.3d 401, 408 (Tex. App.—Dallas 2007, no pet.); *see also CVN Group, Inc. v. Delgado*, 95 S.W.3d 234, 239-40 (Tex. 2002) (explaining that for a "public policy" concern to support setting aside an arbitration award it must be "well defined and dominant" and not cobbled "from

general considerations of supposed public interests,”” quoting *W.R. Grace & Co. v. Local Union 759*, 461 U.S. 757, 766 (1983)).<sup>2</sup>

The SSPA provides in relevant part as follows:

No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been approved in advance in a final court order based on express findings by the court that:

(1) the transfer is in the best interest of the payee, taking into account the welfare and support of the payee’s dependents . . . .

Tex. Civ. Prac. & Rem. Code § 141.004. In short, the SSPA requires that any transfer of structured settlement payments be preapproved by a court. *Id.* Rapid acknowledges that no court has approved the transfer of Patterson’s structured settlement payments to Rapid. Consequently, Symetra argues that we should reverse the trial court’s confirmation of the arbitration award and order the award vacated because the arbitrator violated the public policy set forth in the SSPA. As explained more fully below, we agree.

As Symetra points out, this court and numerous other courts in Texas and other jurisdictions have held that Rapid’s use of arbitration to obtain rights to structured settlement payments violates the SSPA, or other states’ highly similar protection acts; in other words, these courts have held that Rapid cannot accomplish through arbitration that which the protection acts prevent it from otherwise doing: effectuating the transfer of structured

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<sup>2</sup> Rapid maintains that the Federal Arbitration Act governed the arbitration; Symetra cites both to cases decided under the FAA and to cases decided under the Texas Arbitration Act. The outcome of this case is not determined by whether the arbitration occurred under the FAA or the TAA; accordingly, we decline to decide under which act arbitration occurred. *See generally Apache Bohai Corp.*, 480 F.3d at 401 (holding courts should vacate arbitration awards under the FAA if contrary to public policy); *CVN Group, Inc.*, 95 S.W.3d at 239-40 (discussing application of public policy to arbitrations under the TAA).

settlement payment rights from the original payee without court approval.<sup>3</sup> *See, e.g., Symetra Life Ins. Co. v. Rapid Settlements, Ltd.*, No. H-05-3167, 2008 WL 901584, at \*21, 24 (S.D. Tex. March 31, 2008); *Allstate Settlement Corp. v. Rapid Settlements, Ltd.*, No. 06-4989, 2007 WL 1377667, at \*6 (E.D. Pa. May 8, 2007); *Rapid Settlements, Ltd. v. Symetra Life Ins. Co.*, 234 S.W.3d 788, 800 (Tex. App.—Tyler 2007, no pet.); *In re Rapid Settlements*, No. 14-06-00698-CV, 2007 WL 925698, at \*3 (Tex. App.—Houston [14th Dist.] March 29, 2007, orig. proceeding) (mem. op.).<sup>4</sup> Moreover, the Southern District of Texas has issued a permanent injunction barring Rapid from engaging in these arbitration practices in the future. *Symetra Life*, 2008 WL 901584, at \*25. Rapid offers no reasoning compelling us to contradict this growing mass of authority.

## **B. Rapid’s Arguments**

In response to Symetra’s arguments and in support of confirmation of the arbitration award, Rapid contends that: (1) the arbitration award did not effectuate a “transfer” as that term is defined by the SSPA, (2) the Federal Arbitration Act (FAA) preempts the SSPA under these circumstances, and (3) because Symetra is a mere stakeholder in privity with Patterson, it is bound by the arbitration award yet does not have standing to contest it. We will discuss each of these arguments in turn.

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<sup>3</sup> While Rapid spends considerable energy attempting to factually distinguish several of the other cases in which it has been involved, the legal reasoning of the other opinions is applicable irrespective of factual or procedural differences. Accordingly, we will not dwell on the facts of each of these other cases.

<sup>4</sup> Courts have indeed called Rapid’s arbitration process “a transparent . . . arbitration scheme,” a “transparent . . . stratagem,” “illegal practices,” and “a violation of the substantive law.” *See Allstate Settlement Corp. v. Rapid Settlements, Ltd.*, No. 07-3224, 2009 WL 514080, at \*7 (3d Cir. March 3, 2009) (“a transparent . . . arbitration scheme”); *Symetra Life*, 2008 WL 901584, at \*25 (“illegal practices”); *Rapid Settlements*, 234 S.W.3d at 800-01 (“transparent . . . stratagem” and “a violation of the substantive law”). Some of Rapid’s arguments have even been held to be frivolous and worthy of Federal Rule 11 sanctions. *See Fid. & Guar. Life Ins. Co. v. Harrod*, No. Civ.CCB-5-2732, 2007 WL 2847966, at \*6 (D. Md. Sept. 27, 2007) (imposing Rule 11 sanctions against Rapid).

## 1. “Transfer”

Rapid first argues that the garnishment of Patterson’s structured settlement payments pursuant to the arbitration award was not a “transfer” as defined by the SSPA. Instead, Rapid contends, because the garnishment was merely a damages remedy in a breach of contract action, court preapproval was not required pursuant to section 141.004 of the SSPA. The SSPA defines “transfer” as “any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration.” Tex. Civ. Prac. & Rem. Code § 141.002(18). Rapid stresses that the “made by a payee” language indicates that the SSPA governs only voluntary transfers, whereas the arbitrator’s award in the present case was an involuntary transfer instituted by the arbitrator as a remedy for Patterson’s breach of the transfer agreement and the promissory note.

Rapid’s argument, however, ignores the facts of this case. In the transfer agreement, Patterson agreed to transfer his rights to structured settlement payments in return for consideration, *i.e.*, a present lump sum payment. In the “Agreed Award,” Patterson *agreed* to garnishment of his structured settlement payments in exchange for a lump sum payment and the relinquishment of Rapid’s breach of contract claims against him. *See generally Harris v. Balderas*, 27 S.W.3d 71, 80 (Tex. App.—San Antonio 2000, pet. denied) (holding consideration is fundamental element of settlement agreement). In other words, in settling the breach of contract action, Patterson essentially agreed to consummate the original transfer agreement. The fact that the transfer was allegedly to settle a breach of contract action does not mean that a transfer did not occur under the terms of the SSPA. *See Symetra Life*, 2008 WL 901584, at \*16-17; *Allstate Life Ins. Co. v. Rapid Settlements, Ltd.*, No. Civ.A.3:06CV00629DPJ, 2007 WL 2745806, at \*3-4 & n.2 (S.D. Miss. Sept. 20, 2007); *see also* Tex. Civ. Prac. & Rem. Code § 141.002 (prohibiting both direct and indirect transfers absent court approval); *Symetra Life*, 2008 WL 901584, at \*17 (distinguishing various involuntary kinds of transfers from arbitration awards and concluding that an arbitration award is a transfer under the SSPA); *Rapid Settlements*, 234 S.W.3d at 800-01 (holding that

a garnishment of structured settlement payments constituted an SSPA transfer because it was based on a security interest created in the structured payments).<sup>5</sup> Accordingly, we reject Rapid's argument that the arbitration proceedings did not effectuate a transfer as that term is defined in the SSPA.

## 2. Federal Preemption

Rapid next contends that the arbitration proceedings are exempt from application of the SSPA because the FAA preempts the SSPA under the circumstances presented in this case. Rapid maintains that the federal policy favoring arbitration of disputes means that any state statute restricting arbitration is preempted, citing *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 122 (2001), *et. al.* According to Rapid, applying the SSPA to invalidate the arbitrator's award in this case would improperly restrict the parties' right to arbitrate under the FAA, thus running afoul of federal preemption doctrines.<sup>6</sup>

The Supremacy Clause of the United States Constitution provides that the laws of the United States are "the supreme Law of the Land; . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. Consequently, when a state law conflicts with federal law, the state law is preempted and has no effect. *BIC Pen Corp. v. Carter*, 251 S.W.3d 500, 504 (Tex. 2008). State law may be in conflict with federal law, and thus preempted, in three ways: (1) federal law can expressly preempt state law on a particular subject; (2) federal law impliedly preempts state law when a federal statute's

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<sup>5</sup> That Patterson was without authority to agree to transfer his rights to the structured settlement payments, even in settlement of a legal claim against him, is made abundantly clear by section 141.001 of the SSPA, which expresses that the State of Texas has an interest in making sure that any transfer of such payments is in the best interest not only of the recipient but also of his or her dependents. Tex. Civ. Prac. & Rem. Code § 141.004. To this end, court approval of such transfers is mandated. *Id.*

<sup>6</sup> Rapid also offhandedly suggests that it is "of no moment" that the transfer in this case was approved by an arbitrator rather than by a Texas court, suggesting that the respective approval be accorded equal status. This contention is clearly contrary to the express provisions of the SSPA, which require court approval. Tex. Civ. Prac. & Rem. Code § 141.002 (defining court so as not to include arbitrators); *id.* § 141.004 (requiring court approval of transfers). Furthermore, the arbitration award does not reflect that the arbitrator approved the transfer as being in the best interest of Patterson or his dependents, if any.

scope indicates that Congress intended federal law to exclusively occupy a particular field of law; and (3) state law is also impliedly preempted if such law actually conflicts with federal law. *Id.* This last type of preemption takes effect when (1) it would be impossible for a private party to comply with both the state and federal laws; or (2) state law obstructs the full purposes and objectives set forth by the United States Congress. *Id.*

As several courts have already held in cases involving Rapid, application of the SSPA under these circumstances does not conflict with the FAA because the SSPA does not prevent parties to a structured settlement transfer agreement from selecting and participating in arbitration as the means for resolving disputes under their agreement. *See, e.g., Allstate Settlement*, 2007 WL 1377667, at \*5 n.4; *Allstate Life Ins.*, 2007 WL 2745806, at \*5; *Rapid Settlements*, 234 S.W.3d at 800. The federal policy favoring arbitration as a procedure for resolving disputes does not mean that parties can accomplish through arbitration that which the substantive law of a state prohibits. *See Symetra Life*, 2008 WL 901584, at \*13-14; *Rapid Settlements*, 234 S.W.3d at 800. The state substantive law at issue here, the SSPA, does not prevent the parties from agreeing to arbitrate or proceeding to arbitration; it only limits what can be accomplished through arbitration; consequently, the FAA does not preempt the SSPA under these circumstances. Accordingly, we reject Rapid's preemption argument.

### **3. Symetra's Standing**

Lastly, Rapid argues that as a mere stakeholder, Symetra has no standing to contest the arbitration award.<sup>7</sup> Rapid also asserts that because Symetra's duties in regard to the structured payments were purely ministerial in nature, Symetra has no justiciable interest at stake. At the same time, Rapid insists that Symetra is bound by the award because of its

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<sup>7</sup> Rapid may challenge Symetra's standing on appeal even though it did not file a notice of appeal because standing affects the jurisdiction of not only the trial court to entertain Symetra's complaints about the arbitration award but also of this court. *See Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443-45 (Tex. 1993). If Symetra were without standing, *i.e.*, unharmed and without an interest to protect from imminent harm, any opinion addressing its complaints would be merely advisory. *See id.* at 444.

privity with Patterson.<sup>8</sup> A party has standing when it is personally aggrieved, *i.e.*, when it has a justiciable interest in the controversy. *Nootsie, Ltd. v. Williamson County Appraisal Dist.*, 925 S.W.2d 659, 661 (Tex. 1996).

As a stakeholder in regards to the structured settlement proceeds, Symetra has justiciable interests in the arbitration confirmation, and those interests are distinct from, rather than identical to, those of Patterson. These distinct interests stem from two sources. First, the SSPA provides that no structured settlement obligor or annuity issuer, such as Symetra, can be required (as the arbitrator and district court have attempted to do here) to make any payment to any transferee absent court approval of the transfer. *See* Tex. Civ. Prac. & Rem. Code § 141.004. This provision gives Symetra an interest sufficient to contest any attempt to force it to make payments, in the absence of court approval, to anyone other than the original payee. *See Allstate Settlement Corp. v. Rapid Settlements, Ltd.*, No. 07-3224, 2009 WL 514080, at \*5-6 (3d Cir. March 3, 2009); *see also In re Rapid Settlements*, 202 S.W.3d 456, 462 (Tex. App.—Beaumont 2006, orig. proceeding) (holding annuity issuers had standing to seek stay of arbitration proceedings because the SSPA, section 142.006(b), provides them the right to participate in the hearing on the application for court approval). Second, if Symetra were to make payments to the wrong payee, it could become subject to double liability. This potential liability gives Symetra a justiciable interest in any attempt to transfer the right to receive structured payments absent court approval. *See Allstate Life Ins.*, 2007 WL 2745806, at \*4; *Symetra Life Ins. Co. v. Rapid Settlements, Ltd.*, No. H-05-3167, 2007 WL 114497, at \*29 (S.D. Tex. Jan. 10, 2007).<sup>9</sup> Because Symetra has

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<sup>8</sup> Rapid specifically cites to res judicata law in arguing that Symetra is a successor-in-interest to Patterson and thus in privity with him. *See Getty Oil Co. v. Ins. Co. of N. Am.*, 845 S.W.2d 794, 800 (Tex. 1992). Rapid however goes no further with the argument; it does not explain how a mere stakeholder of structured settlement funds could have the same interest in the property as the intended recipient, and it does not explain how Symetra could be a *successor*-in-interest to a party that receives the property from Symetra. We express no opinion on the merits of arguments not raised.

<sup>9</sup> In a post-submission letter brief, Rapid contends that the risk of double liability is illusory because if the arbitrator's award was confirmed by a court, it would be binding on Symetra, and no party would be able sue it for the payments, citing 9 U.S.C. § 13(c). This argument, however, begs the question of whether

distinct interests at stake in any proceeding attempting to transfer structured payments absent court approval, it has standing in the present case to contest the arbitration award. Consequently, we reject Rapid's challenge to Symetra's standing.

### **III. Conclusion**

Based on the foregoing analysis and authority, we hold that the arbitration award violates the public policy of the State of Texas as set forth in the SSPA by effectuating a transfer of Patterson's structured payments to Rapid. Consequently, the trial court erred in confirming the arbitration award and in ordering Symetra to make the structured payments to Rapid instead of Patterson. Accordingly, we sustain Symetra's first and fifth issues. Because we sustain these issues, we need not consider Symetra's remaining issues.

We reverse the trial court's judgment and render judgment vacating the arbitration award.

/s/ Adele Hedges  
Chief Justice

Panel consists of Chief Justice Hedges and Justices Anderson and Seymore.

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in the absence of court approval, an arbitration award can validly transfer Patterson's rights to his structured settlement payments. Rapid offers no explanation for how an invalid award could defeat challenges to the unapproved transfer, such as by a transferee who obtained court approval for its transfer.