OFFICE OF THE GENERAL COUNSEL
DIVISION OF OPERATIONS-MANAGEMENT

MEMORANDUM 94-93 October 31, 1994

TO: All Regional Directors, Officers-in-Charge and Resident Officers

FROM: William G. Stack, Associate General Counsel

SUBJECT: Fraudulent Transfer of Assets Provisions of the Federal Debt Collection Procedures Act

On October 13, 1994, the U.S. District Court for the District of Massachusetts issued a decision in NLRB v. Sidney H. Sisselman and Simone F. Sisselman, Civil Action No. 93-30127-FHF, wherein the court interpreted the fraudulent transfer provisions of the Federal Debt Collection Procedures Act (FDCPA). (Copy of Decision attached.) This case arose after the Board was unable to collect most of the backpay owed by Defendant Sidney Sisselman pursuant to an enforced supplemental Board Order. The Board subsequently deposed Mr. Sisselman. As a result, the Board discovered, and the Court found, that Mr. Sisselman, who was financially insolvent, had surrendered four life insurance policies owned by him and had applied the net proceeds of these policies to a new life insurance policy on his life which was owned by his wife, Defendant Simone Sisselman. The Board filed a complaint in the U.S. District Court seeking to set aside this transfer of assets. The Board also requested, pursuant to the FDCPA, and the Court granted, a writ of prejudgment garnishment against the life insurance company to protect and preserve the cash value of the insurance policy. Thereafter, the Board filed a motion for summary judgment and, in support thereof, the deposition and other documents. The Court, applying Section 3304 of the FDCPA, concluded that the transaction was a fraudulent transfer and voided the transaction. It further ordered the life insurance company to pay the proceeds of the policy to the Board.

This is the first court decision which has applied the fraudulent transfer provisions of the FDCPA to the Board's backpay claims. See also Casehandling Manual Sections 10594 and 10596.3(g). The case is also illustrative of the ways in which the FDCPA can be used by the Regions to assist in their collection efforts. By using it, all the problems with state procedures in the creditor rights area can be avoided. Please assure that staff members involved in collection actions use the

procedures of the FDCPA. The Contempt Litigation Branch will assist if you call upon it.

Questions about this memorandum can be addressed to your Assistant General Counsel or to the Contempt Litigation Branch.

W.G.S.

Attachment

cc: NLRBU

AO 450 (Rev. 5/85) Judgment In a Civil Case

United States District Court

DISTRICT OF MASSACHUSETTS

NATIONAL LABOR RELATIONS BOARD

JUDGMENT IN A CIVIL CASE

V.

SIDNEY H. SISSELMAN and
SIMONE F. SISSELMAN

CASE NUMBER: 93-30127-FHF

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

JUDGMENT entered for the Plaintiff pursuant to the Memorandum and Order of the Court entered this date granting the Plaintiff's Motion for Summary Judgment.

October 13, 1994
Date

ROBERT J. SMITH, JR.
Clerk

(By) Deputy Clerk

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

NATIONAL LABOR RELATIONS BOARD, Plaintiff	)	
v.	)	CIVIL ACTION NO. 93-30127-FHF
SIDNEY H. SISSELMAN and SIMONE F. SISSELMAN, Defendants	)	

MEMORANDUM AND ORDER

October 13, 1994

FREEDMAN, S.J

I. INTRODUCTION

Before the Court is plaintiff National Labor Relations Board's ("plaintiff") motion for summary judgment as to a complaint against defendants Sidney and Simone Sisselman ("defendants"). Defendants oppose plaintiff's motion in the form of letters to the Court.

II. BACKGROUND

The history of the case, as set forth by plaintiff, appears to be predominantly undisputed. On May 10, 1990, the First Circuit Court of Appeals entered judgment in Case Nos. 85-1294 and 85-1687, NLRB v. Workroom for Designers, Inc. and Sidney H. Sisselman ("the judgment"), requiring Workroom for Designers, Inc. ("Workroom") and Sidney Sisselman to remedy violations of the National Labor Relations Act by making whole certain named discriminates by payment of the principal sum of $731,352.90, plus interest. However, despite repeated demands for payment by the NLRB, Workroom and Sidney Sisselman apparently failed to pay

any amounts owed under the judgment, with the exception of funds seized from Sidney Sisselman's account at Northwest Savings Bank.

Turning to the issue underlying the instant dispute, on February 2, 1991, Sidney Sisselman caused $14,000 being held for his benefit by Guardian Life Insurance Company ("Guardian") to be transferred to a whole life insurance policy on his life nominally owned by his wife, Simone Sisselman. The source of this $14,000 was four matured whole life insurance policies owned by Sidney Sisselman, surrendered by him on January 10, 1991. Evaluating the above actions, plaintiff asserts that: (1) the whole life policy owned by Simone Sisselman was established only a few months before the transfer of funds by Sidney Sisselman; (2) Sidney Sisselman made the above transfer without receiving a reasonably equivalent value in exchange for the transfer; (3) at the time of the transfer Sidney Sisselman was insolvent; and (4) as a result, the aforesaid transfer was fraudulent as to the debt owed to the plaintiff, pursuant to 28 U.S.C. § 3304.

On June 17, 1993, the plaintiff filed a complaint in this Court seeking to set aside defendants' alleged fraudulent transfer. Plaintiff also requested, and the Court granted, a writ of prejudgment garnishment against Guardian to protect and preserve the cash value of the whole life insurance policy now owned by Simone Sisselman. Thereafter, on October 1, 1993, the Court held a hearing on the continuing viability of plaintiff's prejudgment garnishment, and after hearing from both parties, allowed--among other rulings--said garnishment to remain in

place. Plaintiff filed its motion for summary judgment on May 2, 1994; defendants filed responses to the motion on May 3, 1994. The Court moves to a resolution of plaintiff's motion below.

III. STANDARD OF REVIEW

Summary judgment is proper under Fed. R. Civ. P. 56(c) ("Rule 56(c)") when "the pleadings and the affidavits raise no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law." Mendes v. Medtronic, Inc., 18 F.3d 13, 15 (1st Cir. 1994). "The nonmoving party bears the burden of placing at least one material fact into dispute after the moving party shows the absence of material fact." Id., discussing Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). In this setting, a "'genuine' issue is one 'that properly can be resolved only by a finder of fact because [it] may reasonably be resolved in favor of either party' . . . [and a] material issue is one that 'affect[s] the outcome of the suit. . . .'" Collins v. Martella, 17 F.3d 1, 3 n.3 (1st Cir. 1994), quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 250 (1986); see also Hayes v. Douglas Dynamic, Inc., 8 F.3d 88, 90 (1st Cir. 1993). "Mere allegations, or conjecture unsupported in the record, are insufficient to raise a genuine issue of material fact." Horta v. Sullivan, 4 F.3d 2, 11 (1st Cir. 1993). Finally, questions of law are appropriate for resolution on summary judgment, barring a genuine dispute of material fact. Jimenez v. Peninsular & Oriental Steam Navigation Co., 974 F.2d 221, 223 (1st Cir. 1992).

IV. DISCUSSION

As stated above, plaintiff's motion for summary judgment is premised on the contention that no genuine issue of material fact remains with respect to the fraudulent transfer of the insurance monies from Sidney to Simone Sisselman. Alternatively, defendants assert that they should be able to keep their insurance policy. Moving to the applicable statute, Title 28 of the United States Code, section 3304, provides in pertinent part:

> Except as provided in section 3307, a transfer made or obligation incurred by a debtor is fraudulent as to a debt to the United States which arises before the transfer is made or the obligation is incurred if--
>
> (1)(A) the debtor makes the transfer or incurs the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation; and
>
> (B) the debtor is insolvent at that time or the debtor becomes insolvent as a result of the transfer or obligation; or
>
> (2)(A) the transfer was made to an insider for an antecedent debt, the debtor was insolvent at the time; and
>
> (B) the insider had reasonable cause to believe that the debtor was insolvent.

28 U.S.C. § 3304(a)(1) and (2). See generally United States v. Teeven, No. 92-418 LON, 1992 U.S. Dist. LEXIS 22190, slip op. (D. Del. October 27, 1992).

Here, plaintiff alleges that "[t]he documentary evidence presented establishes, and the Sisselmans admit, all of the facts demonstrating that Sidney Sisselman owed a debt to the United States Government at the time his insurance proceeds were

transferred to his wife's policy, that Sidney Sisselman transferred insurance proceeds to his wife's policy without receiving anything of monetary value, and that Sidney Sisselman was insolvent at the time he made the transfer to his wife." Motion of the National Labor Relations Board for Summary Judgment ("Plaintiff's Motion") at 6-7. Therefore, plaintiff contends that "Sidney Sisselman's transfer of funds to his wife's policy was fraudulent and should be voided by this Court (28 U.S.C. § 3306(a))." Id. at 7.

Upon review, the Court notes initially that plaintiff relies on the deposition of Sidney Sisselman, as well as other attached documents, in support of its motion for summary judgment. Plaintiff's Motion, Appendix A-D. In particular, plaintiff's submissions reveal that defendant Sidney Sisselman: (1) admitted that he was aware of the debt that he owed to plaintiff, id., Appendix A; (2) surrendered four life insurance policies owned by him and applied the net proceeds of those policies to a new life insurance policy on his life owned by his wife Simone Sisselman, id., Appendix B and C; (3) testified that no monetary value was given to him by his wife, id., Appendix A; and (4) admitted that at the time of the transfer of the insurance funds, in 1990 and 1991, that he was financially insolvent, id., Appendix A. See Plaintiff's Motion at 3-6. In short, the aggregate of the foregoing is enough for plaintiff to satisfy both the elements of a fraudulent transfer, see 28 U.S.C. § 3304(a)(1)(A) and (B), and the standard for summary judgment.

At bottom, plaintiff has satisfied the burden of showing that the aforementioned transfer between the defendants was, in fact, fraudulent. The Court notes that, while recognizing and considering that defendants are not represented by counsel, it cannot overlook--and the record reveals--the fact that defendants clearly have no viable defense to plaintiff's claim. Accordingly, the Court will void the transfer between Sidney and Simone Sisselman, see 28 U.S.C. § 3306(a), and order Guardian to pay the proceeds of defendants' life insurance policy to plaintiff immediately. Finally, given the aforesaid circumstances surrounding plaintiff's motion--including the observations made by the Court at the October 1, 1993 hearing--the Court denies plaintiff's request for attorney's fees and/or other costs and sanctions against the defendants.

V. CONCLUSION

For the reasons discussed above, plaintiff's motion for summary judgment is GRANTED; the request for attorney's fees and/or other costs and sanctions is DENIED.

It is So Ordered.

Frank H Freedman

Senior United States District Judge