

**STATE OF MINNESOTA**  
**COUNTY OF HENNEPIN**

**DISTRICT COURT**  
**FOURTH JUDICIAL DISTRICT**

---

Judge Mel I. Dickstein

Brian L. Sobol,

Plaintiff,

vs.

Katz & Manka Ltd., f/k/a  
Katz Manka Teplinsky & Sobol, Ltd.  
Alvin L. Katz and Gary L. Manka,

Defendants.

---

**ORDER GRANTING  
PLAINTIFF'S MOTION FOR ORDER  
INTERPRETING SETTLEMENT  
AGREEMENT**

Court File No. 27-CV-14-13876

The above-entitled matter came on for hearing before the Honorable Mel I. Dickstein, Judge of District Court, on July 25, 2016 pursuant to Plaintiff's Motion for Order Interpreting Settlement Agreement. John Orenstein, Esq., appeared on behalf of Plaintiff Brian L. Sobol, who was also present. Stephen Plunkett, Esq., appeared on behalf of Defendants Katz & Manka Ltd., f/k/a Katz Manka Teplinsky & Sobol, Ltd., Alvin L. Katz, and Gary L. Manka.

Now, therefore, based on all the files, records, and proceedings herein, the Court makes the following:

**ORDER**

1. Plaintiff's Motion for Order Interpreting Settlement Agreement is **GRANTED** as follows:
  - a. \$30,922.20 of the settlement shall be attributable to the Note
  - b. \$215,077.80 of the settlement shall be attributable to the deferred compensation
2. The attached memorandum is incorporated herein by this reference.

Dated:

**BY THE COURT**

---

Mel I. Dickstein  
Judge of District Court

## MEMORANDUM

### I. BACKGROUND

This motion arises from a settled lawsuit between Plaintiff Brian L. Sobol (“Plaintiff”), and Defendants Katz & Manka Ltd., f/k/a Katz Manka Teplinsky & Sobol, Ltd., Alvin L. Katz, and Gary L. Manka (collectively, “Defendants”). The parties now disagree over how the settlement of \$246,000, the terms of which were read on the record by this Court on December 30, 2014, should be apportioned for tax purposes.

Plaintiff maintains that \$62,500 of the \$246,000 should be apportioned for repayment of a Note that was at issue in the suit, with the remainder apportioned to the deferred compensation to which he asserted entitlement. Any apportionment to deferred compensation is taxable to Plaintiff, while repayment of principal on the Note is not. Defendants counter by asserting that the agreement only mandated that they were to pay Plaintiff \$246,000, and that it was silent with regard to any specific allocations or designations for tax purposes. As a result, Defendants maintain that Plaintiff’s current demand asks the Court to write a term into the settlement agreement which was never discussed, and to which the parties did not agree. Defendants began payment of the settlement amount on December 31, 2016, and have allocated all funds since that time to deferred compensation, which they assert is their right under the agreement. Under the terms of the settlement agreement, Defendants will continue to pay Plaintiff \$4,000 per month through May 2017.

### II. LEGAL ANALYSIS

When a lump sum settlement encompasses both taxable and non-taxable claims, it is appropriate to make an allocation between the various claims. *See, e.g., Glatthorn v. United States*, 818 F. Supp. 1548, 1551 (S.D. Fla. 1993). The allocation is often important to the recipient of the

funds, and to the IRS.<sup>1</sup> Where no allocation has been made as a part of the settlement, several courts have held that the allocation may be made by applying several factors, including the pleadings, the evidence, the terms of the settlement, and the intent of the payor. *Glatthorn*, 818 F. Supp. at 1551; *see also Josifovich v. Secure Computing Corp.*, 2009 WL 2390611 at \*4; *Lane v. U.S.* 902 F. Supp. 1439, 1441 (W.D. Okla.1995); and *U.S. v. Villaume* 616 F. Supp.185,188 (D. Minn. 1985).

In *Josifovich v. Secure Computing Corp.*, *supra*, the case whose facts are most comparable to those in the present case, Plaintiff applied to the court for a determination whether employment tax withholdings were appropriate for any or all of the settlement proceeds, and if so how the proceeds should be allocated. In *Josifovich*, as in the current case, the settlement was the result of a lengthy negotiation after which the parties put the agreement on the record with the understanding that the agreement would be reduced to a writing in appropriate form.

In *Josifovich*, however, the parties' disagreement matured during the process of reducing the agreement to writing. *Id.* at \*2 The parties disagreed with whether the Defendants were required to withhold taxes on all or a part of the settlement proceeds. Neither party raised the issue during the seven-hour settlement conference, and the issue was not deemed essential or put on the record. The *Josifovich* Court concluded that the terms relating to the tax treatment were not essential, but were part of the implementation of the agreement. *Id.* The court determined that it may look beyond the face of the agreement to glean the true nature of the payment. *Id.* at \*4

In the present case, as in *Josifovich*, the parties did not address the tax treatment of the settlement, the tax treatment is not an essential term of the settlement, and the Court must look beyond the face of the agreement to discern the true nature of the payment.

---

<sup>1</sup> In some cases there may also be tax ramifications for the defendant, but there is no evidence of record upon which the Court can make such a determination in this case.

The Court concludes that the \$246,000 settlement amount should be apportioned between the Note and deferred compensation in proportion to the original demand.

The Complaint asserted entitlement to both the proceeds of a Note, and contractual obligations for deferred compensation. In reaching a lump sum settlement, the parties did not distinguish between the two claims, and there are no facts of record or evidence of the payor's intent upon which to rely in making any apportionment. The Court therefore looks to the original Complaint to make the apportionment.

In the original demand, Plaintiff asserted Defendants owed him approximately \$57,500 for repayment of a Note,<sup>2</sup> and \$400,000 in deferred compensation, for a total of \$457,500. Compl. ¶¶ 10,19. As such, the Note comprised 12.57% of the total claim. The settlement amount reached by the parties was \$246,000, of which 12.57% is \$30,922.20, and thus, the Court finds, attributable to the Note. The remainder, \$215,077.80, is attributable to the deferred compensation.

While plaintiff asserts there is no dispute regarding the amount owed under the Note, Defendants take issue, and the Court cannot resolve the dispute in this Order. If the parties had chosen to, they could have proceeded to trial to resolve the issue, or entered into a settlement which clearly apportioned the amount between the Note and deferred compensation.

### **III. CONCLUSION**

For all of the reasons stated, the settlement should be apportioned as set forth above.

---

<sup>2</sup> Plaintiff asserted the Note was in the principal amount of \$62,500. The parties also agreed that Defendants had paid \$5000 on the Note, leaving a principal balance of \$57,500. Hearing, July 25, 2016.