

LAWS OF NEW YORK, 2008

CHAPTER 441

AN ACT to amend the civil practice law and rules, in relation to income and property executions

Became a law August 5, 2008, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraphs 2 and 3 of subdivision (b) of section 8012 of the civil practice law and rules, paragraph 3 as amended by chapter 532 of the laws of 1963, are amended and two new paragraphs 4 and 5 are added to read as follows:

2. Where a settlement is made after a levy by virtue of service of an execution, the sheriff is entitled to poundage upon the ~~[value of the property levied upon, not exceeding the sum at which the settlement is made]~~ judgment or settlement amount, whichever is less. Where an execution is vacated or set aside after levy, the sheriff is entitled to poundage upon the value of the property levied upon, not exceeding the amount specified in the execution, and the court may order the party liable therefor to pay the same to the sheriff.

3. Where a settlement is made, either before or after judgment, after a levy by virtue of service of an order of attachment, the sheriff is entitled to poundage upon the ~~[value of the property levied upon, not exceeding the sum at which the settlement is made]~~ judgment or settlement amount, whichever is less. Where an order of attachment is vacated or set aside after levy, the sheriff is entitled to poundage upon the value of the property levied upon, not exceeding the amount specified in the order of attachment, and the court may order the party at whose instance the order of attachment was granted to pay the same to the sheriff. Where an order of attachment is otherwise discharged by order of the court, the sheriff is entitled to the same poundage, to be paid by the party at whose instance the order of attachment is discharged, and the sheriff is entitled to retain the property levied upon until the poundage is paid. The maximum amount upon which poundage shall be computed, if such a settlement is made or the order of attachment is vacated or set aside, is one million dollars.

4. Where a settlement is made after service of an income or property execution upon the debtor pursuant to subdivision (d) of section fifty-two hundred thirty-one of this chapter or upon the garnishee pursuant to subdivision (e) of section fifty-two hundred thirty-one of this chapter the sheriff is entitled to poundage upon the judgment amount or settlement amount, whichever is less. Where an income or property execution is vacated or set aside after levy, the sheriff is entitled to poundage upon the value of the property levied upon, not exceeding the amount specified in the execution, and the court may order the party liable therefor to pay the same to the sheriff.

EXPLANATION--Matter in italics is new; matter in brackets [] is old law to be omitted.

5. A sheriff who brings an action in a court of competent jurisdiction to collect such amount provided for in this subdivision may also be awarded reasonable attorney's fees and court costs.

§ 2. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK **ss:**

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO

Temporary President of the Senate

SHELDON SILVER

Speaker of the Assembly

SUMMARY:

S6355-A LANZA
LANZA

Same as Uni. [A 9262-A](#) Lopez V

Amd S8012, CPLR

Provides for the payment of poundage to the sheriff upon execution of a judgment or settlement.

EFF. DATE 08/05/2008

SPONSORS MEMO:

NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1

BILL NUMBER: S6355A

SPONSOR: LANZA

TITLE OF BILL:

An act to amend the civil practice law and rules, in relation to income and property executions.

PURPOSE:

To clarify that poundage fees are due on the judgment amount or settlement amount whichever is less. Additionally, this legislation clarifies that if the parties settle the judgment after the Sheriff serves an execution, the Sheriff is still due the poundage fees on the settlement amount.

SUMMARY OF PROVISIONS:

Section one amends paragraphs 2 and 3 of section 8012 (b) of the civil practice law and rules and adds new paragraphs 4 and 5 relating to the rules relating to poundage fees where settlements are made after service of an income or property execution or where an income or property execution is vacated or set aside after levy. New paragraph 5 would allow recovery of attorney's fees and court costs if a Sheriff brings an action to collect such poundage fees.

Section two is the bill's effective date.

JUSTIFICATION:

This legislation is meant as a simplification and clarification to the existing law as it relates to poundage fees collected by the Sheriff. This clarification of the law will result in less confusion and disputes as when poundage is due. Under current law the courts have interpreted this section in several ways leading to confusion among courts and attorneys. (See in the matter of International Distributing Export Co., Inc. 219 F. Supp. 412, 1963) This legislation makes it clear that poundage is due on the judgment amount of settlement amount whichever is less. Additionally, this legislation clarifies that if the parties settle the judgment after the Sheriff serves an execution the Sheriff is still due the poundage fees on the settlement amount.

LEGISLATIVE HISTORY:

New bill.

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

Immediately.

