

**CIVIL COURT OF THE CITY OF NEW YORK**

**DIRECTIVES & PROCEDURES**

Class: DRP-201

Category: SC-10

**Subject:** Small Claims Trials and Inquests:  
Judge/Arbitrator/Referee Procedures

Eff. Date: October 27, 2014

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**BACKGROUND**

A recent Appellate Term decision has prompted Civil Court administration to consider changes in the way in which inquests are conducted in the Small Claims Parts of the Civil Court, which shall be addressed per this directive.

On October 11, 2013, the Appellate Term, First Department held that where a small claims action is scheduled for inquest, and following the inquest, the arbitrator, sitting as a referee to hear and report his or her findings to the presiding judge, issues a report where, “[so] far as shown, no ‘findings of fact [or] conclusions of law’ (CPLR 4320[b]) were made by the referee, nor were the inquest proceedings transcribed (*id.*),” the appellate court is “constrained to order a new inquest (citations omitted).” *Kaya v Floyd*, 41 Misc 3d 127 (A), 2013 NY Slip Op 51664 (U) (App Term, 1st Dept).

In fact, the same Appellate Term, less than a year earlier on February 21, 2013, reached the identical conclusion in *Shillingford v Saxe* (38 Misc 3d 144 [A], 2013 NY Slip Op 50266 [U] [App Term, 1st Dept]), and ordered a new inquest hearing to cure the deficiencies of the referee’s report in that small claims case as well.

While it is true that the Uniform Rules for the Civil Court (22 NYCRR) § 208.41(n)(3) directs that where the small claims arbitrator (*sitting as an arbitrator*) hears a controversy “... no record of the proceeding before the arbitrator shall be kept,” and in subdivision (5) of the same rule directs that: “The arbitrator shall make an award in writing and file the same forthwith, together with his or her opinion, *if any*, with the clerk of the small claims part (emphasis supplied),” the same relaxed standard does not apply when the small claims arbitrator *sits as a referee* to conduct an inquest and report his or her findings to the presiding judge.

This enhanced standard is set forth most thoroughly in *Pasamanick v 104 Camera World, Inc.* (116 Misc 2d 972, 973 [Civ Ct, NY County (1982)]), as follows:

Although technically denominated an “arbitrator”, the role of the arbitrator in the context of an inquest is akin to that of a referee. (CPLR Sec. 3215(b)). Therefore, although an arbitrator's award is not generally reviewable (CPLR Sec. 7511; *Raisler Corp. v. NYC Housing Authority*, 32 N.Y.2d 274, 344 N.Y.S.2d 917, 298 N.E.2d 91 (1973); *Application of Jean Roth v.*

*Honorable Shanley N. Egeth, et al.*, Supreme Court/Special Term, Part I, N.Y. County, August 9, 1982, Index No. 9502/82), here, when sitting as a referee to hear and report (CPLR Sec. 4001), he acts as “a kind of assistant to the Court” (Siegel, New York Practice, Sec. 379), conducting a hearing and reporting his findings and conclusions back to the court, which can accept or reject his report (Id.). This is to be distinguished from the situation where both parties in a small claims proceeding consent to submit the matter to arbitration. NYCCCR 2900.33. Then the arbitrator's role is to make a final determination with no right to appeal. The Small Claims arbitrator's role, however, as a referee at an inquest, is solely to examine the claimant's proof and make recommended findings to the Court.

The *Pasamanick* decision goes on to hold that, at the small claims inquest, “...the arbitrator-referee is directed to make detailed findings and recommendations and report on them to the judge presiding in that part forthwith so that ‘substantial justice’ (NYCCCA Sec. 1804) may be accorded in [the] matter.”

#### **DIRECTIVE**

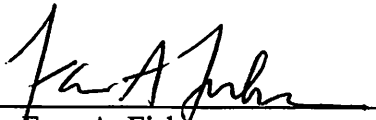
Thus, going forward, each small claims arbitrator designated by the presiding judge in the small claims part to serve as referee to conduct an inquest shall be directed to use the inquest card attached to this directive to make findings of fact and recommendations of law to report to that judge; in short, to provide enough information to effect compliance with the opening sentence of CPLR 4320(b) per the direction of the Appellate Term in *Kaya v Floyd* and *Shillingford v Saxe*, referenced above.

The presiding judge shall have access to the inquest card, which will be maintained in the small claims clerk's office, pending any possible appeal, or motion seeking review made by the claimant at the trial level (*see Pasamanick, supra*).

Also, going forward, following the call of the small claims calendar, it is directed that the presiding judge conduct trials first, before hearing any inquests. In the event all ready trials for that session have been heard, then the judge may hear inquests.

Preferably, following the call of the calendar, ready inquests should be referred to the assigned small claims arbitrators, to sit as referees to hear and report per the instructions set forth in this directive, utilizing the inquest card attached hereto.

Date: October 23 2014

  
\_\_\_\_\_  
Hon. Fern A. Fisher  
Deputy Chief Administrative Judge

REPORT OF ARBITRATOR - REFEREE

Case Name \_\_\_\_\_

Case Number \_\_\_\_\_

I, the undersigned, the ARBITRATOR - REFEREE designated by the Court in the above case, having examined the claimant's proof, do hereby find and recommend:

Nature of Claim:  Contract \_\_\_\_\_  Negligence \_\_\_\_\_  Other \_\_\_\_\_

AUTOMOBILE

Accident Date: \_\_\_\_\_ Place: \_\_\_\_\_  
Make of Car: \_\_\_\_\_ Model and Year: \_\_\_\_\_  
Property Damage \$ \_\_\_\_\_ Paid cash: \_\_\_\_\_ Paid Check: \$ \_\_\_\_\_ Total: \$ \_\_\_\_\_

CLEANING

Dry Cleaning  Tailoring  Dyeing  Storage  
 Damaged Goods  Loss of Property

HOUSING

Rent Action  Roommate  Security Return  Deposit Return

SERVICES

Carpentry  Provide  Install  Repair  
 Other  Electrical  Plumbing  Painting  Auto

PROFESSIONAL

Accounting  Brokerage  Dental  Legal  Medical  
 Nursing  Other \_\_\_\_\_

OTHER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CLAIMANT AND OR DEFENDANT (ON COUNTERCLAIM) SWORN

Exhibits

Witnesses       Expert    Other

Claimant proved prima facie case in the amount of \$ \_\_\_\_\_

Claimant did not prove prima facie case.

Explanation: \_\_\_\_\_  
\_\_\_\_\_

Claimant/and or claimant's witnesses presented credible testimony

Claimant and/or claimant's witnesses did not present credible testimony

Explanation: \_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_,

\_\_\_\_\_

Arbitrator - Referee

ORDER

The above is approved, and the clerk is directed to enter judgment accordingly.

Judgment in favor of \_\_\_\_\_ in the amount of \_\_\_\_\_, with interest from \_\_\_\_\_ and disbursements of \_\_\_\_\_.

Judgment in favor of Defendant. Claim Dismissed. No monetary award.

Dated: \_\_\_\_\_,

\_\_\_\_\_

J.C.C.