

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Moulton, J.P., Scarpulla, Shulman, Rodriguez, Michael, JJ.

6384	In the Matter of 144 BARROW STREET LLC, Petitioner-Respondent,	Index No. 152145/21 Case No. 2025-00855
------	---	--

-against-

THE BOARD OF MANAGERS OF 130 BARROW
STREET CONDOMINIUM,
Respondent-Appellant.

Braverman Greenspun, P.C., New York (William J. Geller of counsel), for appellant.

Tuttle Yick LLP, New York (Alexa E. DePierro of counsel), for respondent.

Order, Supreme Court, New York County (Alexander M. Tisch, J.), entered on or about January 17, 2025, which, to the extent appealed from as limited by the briefs, denied respondent’s motion to increase the license fee to be paid by petitioner and denied its motion to confirm the report and recommendation of the Special Referee as to attorneys’ fees, unanimously reversed, on the law and the facts, without costs, to vacate the award of attorneys’ fees and remand for further proceedings.

In a prior order pursuant to RPAPL 881, the court set the monthly license fee at \$2,000, an amount equal to the license fee agreed between the parties in five prior pre-litigation license agreements. In the same prior order, the court expressly provided that “either party may make an application . . . supported by adequate proof” “[s]hould the amount of the fee prove to be insufficient or otherwise need to be changed.” Accordingly, in the motion now at issue, respondent sought an increase to the license fee. In support, respondent submitted an appraiser’s report that provided an assessment

of projected damages based on rental value loss allocated to affected individual units and, collectively, the common roof deck. Petitioner opposed and submitted its own appraiser's report, which asserted that the methodology of respondent's appraiser for calculating the loss in value was flawed.

In assessing \$2,000 per month as the license fee due to respondent, the court acknowledged that the basis for its assessment was the amount of the license fee in the parties' prior agreements. However, whereas the five prior license agreements concerned demolition and excavation of petitioner's property, the instant license fee was for the period of the building's construction. It is undisputed that the construction phase involved different types of interference with respondent's property, including decreased access to outdoor space both for individual units and the building's shared roof deck, as well as obstruction of certain unit windows. Additionally, although petitioner's competing appraisal report took issue with respondent's appraiser's methodology, the record and the parties' arguments contain no genuine dispute that during the license period at issue the nature of the interference had substantially changed (*see Matter of Panasia Estate Inc. v 29 W. 19 Condominium*, 204 AD3d 33, 37 [1st Dept 2022] ["license fee is warranted 'where the granted license will entail substantial interference with the use and enjoyment of the neighboring property during the [license] period, thus decreasing the value of the property during that time' "], *lv dismissed* 38 NY3d 1125 [2022], quoting *DDG Warren LLC v Assouline Ritz 1, LLC*, 138 AD3d 539, 540 [1st Dept 2016]).

Under these circumstances, it was an improvident exercise of discretion to base the license fee on the amount of the prior agreements, without more. The matter should thus be remanded for a determination of the appropriate license fee based on the

interference with respondent's property during the relevant period (*see e.g. Matter of Thomas Anthony Holdings LLC v Goodbody*, 216 AD3d 538, 540 [1st Dept 2023]; *DDG Warren LLC*, 138 AD3d at 540).

As to the calculation of attorneys' fees, CPLR 4403 provides, in relevant part, that the court "may confirm or reject, in whole or in part, . . . the report of a referee to report [and] may make new findings with or without taking additional testimony" (*see Sage Realty Corp. v Proskauer Rose*, 288 AD2d 14, 15 [1st Dept 2001], *lv denied* 97 NY2d 608 [2002]).

Here, the Special Referee itemized the deductions from respondent's request for reimbursement of attorneys' fees but did not detail with any specificity the basis for those deductions. Supreme Court in turn failed to provide a specific basis for finding that the Special Referee's report was inadequate. The court referenced that the invoices contained "block billing, billing with vague descriptions, and extensive time billed which was not spent on negotiating, reviewing, or drafting the license agreements at issue" and reduced the attorneys' fee award to \$14,195.00 without any explanation of how it arrived at that figure. Although the court was not obligated to accept the Special Referee's determination of reimbursable attorneys' fees, it should have provided detailed analysis and explanation for the entries stricken in reaching its award of attorneys' fees (*see Citicorp Trust Bank, FSB v Vidaurre*, 155 AD3d 934, 935-936 [2d Dept 2017]).

We have considered petitioner's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: June 25, 2025

A handwritten signature in black ink, reading "Susanna Molina Rojas". The signature is written in a cursive, flowing style with a large initial "S".

Susanna Molina Rojas
Clerk of the Court