

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

Scarpulla, J.P., González, Rodriguez, Higgitt, Hagler, JJ.

6991

GERTRUDE KOSOVSKY,
Plaintiff-Appellant,

Index No. 154893/19
Case No. 2026-01323

-against-

KAREN KOSOVSKY also known as KAREN A.
KOSOVSKY,
Defendant-Respondent.

Romer Debbas, LLP, New York (Steven Kirkpatrick of counsel), for appellant.

Abrams Fensterman, LLP, Brooklyn (Mark J. Caruso of counsel), for respondent.

Order, Supreme Court, New York County (Paul A. Goetz, J.), entered on or about March 2, 2026, which, to the extent appealed from, confirmed the amended report of the Special Referee dated April 28, 2025, awarding defendant an additional distribution of \$37,002.72 for construction expenses, and rejected the report insofar as it awarded plaintiff an additional distribution of \$34,000 for maintenance fees, \$14,500 for personal property, \$5,087 for moving fees, and \$209,559.96 for defendant's hotel expenses, unanimously modified, on the law and the facts, to reduce the distribution to defendant by \$37,002.72 for construction costs, and to increase the distribution to plaintiff by \$5,087 for moving costs and \$10,285 for insurance premiums, and otherwise affirmed, without costs.

The court properly exercised its discretion in reviewing the Referee's report and rejecting certain awards to plaintiff (CPLR 4403). While courts generally will not disturb a Referee's findings so long as the determination is substantiated by the record where,

as here, the matter was referred to the Referee to report the Referee's findings and recommendations are advisory only and have no binding effect. The court remains the ultimate arbiter (*see Izhaky v Izhaky*, 189 AD3d 617, 618 [1st Dept 2020]).

The court providently exercised its discretion in rejecting the \$34,000 award to plaintiff based on the denial of access to the apartment on two occasions. The parties purchased the apartment together in 2001, yet plaintiff did not seek judicial intervention alleging ouster until 2019, 18 years later. Plaintiff also did not recall being told directly that she could not enter the apartment and does not deny that a key to the apartment was always available to her at the front desk. Moreover, the Referee failed to explain how she arrived at the \$34,000 figure.

The court also providently exercised its discretion in rejecting the \$14,500 award for plaintiff's personal property as she failed to prove which items of personal property were missing and establish the value of those items. While the record includes photographs of the furnishings in the apartment and a list of its contents in 2001, their value was not proven and it is not clear that those items were still in the apartment in 2017, when its contents were removed for construction.

Plaintiff's argument that defendant is being permitted to benefit from having wrongfully obstructed plaintiff's inspection of the Connecticut storage facility lacks merit. According to defendant, plaintiff's counsel never sought access to the facility. Whether the missing personal property was in the storage facility is speculative. In any event, the record does not reflect that plaintiff sought judicial intervention to inspect the facility.

The court properly declined to award plaintiff reimbursement for her storage costs of \$15,193 because plaintiff did not seek reimbursement for this expense before the

Referee. The Referee's report indicates that it was defendant who sought reimbursement for the storage costs. Nor does the record support plaintiff's argument that the Referee acknowledged that plaintiff was entitled to reimbursement for the storage costs.

However, the court should have confirmed the award to plaintiff of \$5,087 for moving fees and rejected the award to defendant of \$37,002.72 for construction costs that the Referee found were subject to proof, which was never provided. The court rejected plaintiff's request for moving costs because she failed to provide proof of payment yet improperly confirmed the award of construction costs to defendant, even though such costs were not substantiated. Moreover, plaintiff's claim for moving costs was supported by the record, which included cancelled checks. Defendant's claim for construction costs was not.

Plaintiff argues that, per the collateral source rule, she was entitled to payment of the funds expended for defendant's hotel expenses that were paid by her insurer. The common-law collateral source rule, which "is inherently a tort concept" (*Inchaustegui v 666 5th Ave. Ltd. Partnership*, 96 NY2d 111, 116 [2001]), was modified by statute (CPLR 4545) to reduce damage awards by the amount of collateral source payments in certain instances and has no application here. Awarding plaintiff the amount she paid for defendant's hotel expenses, for which she already received reimbursement from her insurer, is barred by the doctrine prohibiting a double recovery (*see Matter of Yedid v Sorkin*, 227 AD3d 562, 563 [1st Dept 2024]). However, plaintiff was entitled to receive

reimbursement for the insurance premiums she paid for the relevant period, which she testified was \$10,285.

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

ENTERED: June 30, 2026

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