

**Bank of East Asia, Ltd., N.Y. Branch v 150 Lafayette  
St. Prop. Invs. Co.**

2004 NY Slip Op 30145(U)

May 28, 2004

Supreme Court, New York County

Docket Number: 0128046/2002

Judge: Charles E. Ramos

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SCANNED ON 8/7/2004  
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Ramos  
*Justice*

PART 33m

THE Bank OF East Asia

INDEX NO. 12804662

- v -

MOTION DATE \_\_\_\_\_

150 Lafayette St

MOTION SEQ. NO. 005

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

**FILED**  
PAPERS NUMBERED  
JUN 07 2004  
NEW YORK  
COUNTY CLERK'S OFFICE

Cross-Motion:  Yes  No

Upon the foregoing papers, it **is** ordered that this motion

~~is~~ **is** decided in accordance with  
accompanying memorandum decision. ~~Settled~~

Dated: 5/28/04

[Signature]  
J.S.C.

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

**CHARLES E. RAMOS**

MOTION/CASE IS RESPECTFULLY REFERRED TO  
JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK:COMMERCIAL DIVISION

-----X  
THE BANK OF EAST **ASIA**, LIMITED, NEW YORK  
BRANCH,

Plaintiff,

Index No.  
128046/02

-against-

150 LAFAYETTE ST. PROPERTY INVESTMENTS CO.,  
RICKY LEUNG, HENRIETTA LEUNG, DUNNE LAI,  
WINNIE MOK, WELLDONE ENTERPRISES, INC.,  
THE CITY OF NEW YORK, and JOHN DOE NO. 1  
through JOHN DOE NO. 20, the last twenty  
names or parties being fictitious and  
unknown to plaintiff, the names or  
parties intended being the tenants,  
lessees, occupants, persons or  
corporations, if any having or  
claiming an interest in or lien  
upon the premises described in the complaint,

Defendants.

-----X

**Charles Edward Ramos, J.S.C.:**

In motion sequence 05, the receiver Phyllis Solomon moves by order to show cause for an order (1) directing the principals of 150 Lafayette Street Property Investments Co. (Lafayette) (a) to contribute funds to the rent security accounts in order that the premises will be in compliance with New York law or (b) to obtain letters of credit for the amount of the security deposits owing; (2) directing the Receiver's interim accounting be confirmed; (3) directing the receiver to withdraw \$32,943.06 for her interim fee.'

The Receiver was appointed on August 18, 2003. She **seeks** \$32,943.06 as compensation for her work from August through December 2003. CPLR 8004(a) provides that a receiver is entitled

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<sup>1</sup>The first part of the motion shall be addressed in a separate decision.

FILED  
JUN 17 2004  
COUNTY CLERK'S OFFICE

to a maximum of 5% of all monies received.<sup>2</sup> Section 35-a of the Judiciary Law<sup>3</sup> requires a detailed itemization before the Court

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<sup>2</sup>It provides:

Generally. A receiver, except where otherwise prescribed by statute, is entitled to such commissions, not exceeding five per cent upon the sums received and disbursed by him, as the court by which he is appointed allows, but if in any case the commissions, so computed, do not: amount to one hundred dollars, the court, may allow the receiver such a sum, not exceeding one hundred dollars, as shall be commensurate with the services he rendered.

'It provides:

Any judge or justice who has during the preceding week fixed or approved one or more fees or allowances of more than five hundred dollars for services performed **by** any person appointed by the court in any capacity, including but not limited to . . . or receiver, shall file a statement with the office of court administration on a form to be prescribed by the state administrator. The statement shall show the name and address of the appointee, the county and the title of the court in which the services of the appointee were performed, the court docket index or file number assigned to the action or proceeding, if any, the title of the action or proceeding, the nature of the action or proceeding, the name of the judge or justice who appointed the person, the person or interest which the appointee represented, whether or not the proceeding was contested, the fee fixed or approved by the judge or justice, the gross value of the subject matter of the proceeding, the number of hours spent by the appointee in performing the service, the nature of the services performed and such other information relating to the appointment as the state administrator shall require. The judge or justice shall certify that the fee, commission, allowance or other compensation fixed or approved is a reasonable award for the services rendered by the appointee, or is fixed by statute. If the fee, commission, allowance or other compensation for services performed pursuant to an appointment described in this section is either specified as to amount by statute or fixed by statute as a percentage of the value of the subject matter of the action or proceeding, the judge or justice shall specify the statutory fee, commission or allowance and shall

can confirm the requested fee. During the relevant period, the Receiver states in a summary statement of account that the total income was \$658,861.17, excluding security deposits. She states that she has incurred over \$500 in costs and disbursements. In addition to collecting rents and paying bills for Lafayette, the Receiver has made numerous court appearances primarily involving the missing security deposits. Another motion made **by** the Receiver involved setting the commission and fees for the managing agent, who is on OCA's list of approved managing agents, and authorizing the Receiver to negotiate new leases. However, she has failed to itemize her hours and services and has failed to submit the form required by Section 35-a of the Judiciary Law.

The Receiver's motion for an interim fee is opposed only by defendants Ricky and Henrietta Leung.<sup>4</sup> The Leungs have two objections. First, they object to the lack of itemization. Second, they object to inclusion of \$95,000 as part of the \$658,861.17 income.

The Receiver is a solo practitioner and cannot be expected to work uncompensated. The Receiver is correct that the cases cited by the Leungs for the proposition that the Receiver's itemization is inadequate, are all cases involving final accountings, not interim accountings such as the one here. Key

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specify the section of the statute authorizing the payment of the fee, commission, allowance or other compensation.

<sup>4</sup>Defendant Dinnie Lai consents to this branch of the motion.


*Bank of New York v Karl V. Anton Jr.*, 241 AD2d 482 (2d Det 1997); *Independent Properties Company Inc. v Mast Property Investors Inc.*, 148 AD2d 849 (3d Dept 1989); *Dubiner v Goldman*, 42 AD2d 843 (2d Dept 1973). However, the law has subsequently changed requiring itemization for interim accountings as well. There is no question that the Receiver has earned her fee. However, the Court must **make** a determination of the "fair value of the services rendered" and cannot **do** so without an itemization. 22 NYCRR 36.4.

The Court will hold this motion in abeyance for 30 days. Upon submission of such a detailed statement, the Court will reconsider this application.

Accordingly, it is

ORDERED, that the motion is held in abeyance until June 25, 2004.

Dated: May 28, 2004

  
\_\_\_\_\_  
J.S.C.

**CHARLES E. RAMOS**