

**Commissioner of State Ins. Fund v Elite
Carpet Care, Inc.**

2007 NY Slip Op 30444(U)

March 15, 2007

Supreme Court, New York County

Docket Number: 0403055

Judge: Louis B. York

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
PRESENT: Hon. LOUIS B. YORK PART 2
Justice

-----X
COMMISSIONER OF THE STATE INSURANCE FUND,
Plaintiff,

-against-

Index No. 403055/06
Motion Date 02/22/07
Motion Seq. No. 001

ELITE CARPET CARE, INC.,
Defendant.

-----X
The following papers, numbered 1 to _____ were read on this motion for Default Jgmt.

NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits _____

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: [] Yes [X] No

PAPERS
FILED
MAR 30 2007
COUNTY CLERK'S OFFICE
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Plaintiff moves for default judgment in this action to collect unpaid Worker's Compensation premiums. The complaint and the affidavit of a collection's manager for plaintiff establish a prima facie case as to the underlying debt of \$7,385.26.

Plaintiff has established liability for collection fees but not the amount of damages. Here, citing State Finance Law §18(5), plaintiff assumes it is entitled to a 22% collection fee. However, Under Section 18(5), a plaintiff is entitled to maximum collection costs of 22% of the debt, but is not entitled to the full 22% unless it establishes reasonable costs of that amount. "SIF must establish at least an 'estimated cost' of the actual collection in this case and may not recover 22% of the debt if that cost is less." (*Commissioners of State Ins. Fund v. Brooklyn Barber Beauty Equipment Co., Inc.*) 191 Misc.2d 1, 12, 740 N.Y.S.2d 180, 189

(Civ. Ct. N.Y. County 2001); (accord) (**Commissioners Of State Ins. Fund v. Elias Kassas**,) 5 Misc.3d 1012(A), 798 N.Y.S.2d 708, 2004 (Civ. Ct. N.Y. County 2004)(avail at WL 2532296, at 5).

In support of its contention, the 22% is an appropriate fee, plaintiff states (1) that a contract between plaintiff and the counsel entitles counsel to a 15% fee and (2) plaintiff seeks 7% to help cover storage costs, staff fees, office space and equipment. First, the amount plaintiff has agreed to pay its counsel is not binding on third parties. Instead, plaintiff must establish or estimate its collection costs. As plaintiff has failed to do so here, the amount must be established at a hearing. Second, the State Finance Law does not state that, in addition to its collection costs, plaintiff is entitled to collect reimbursement of its general overhead. Therefore, the 7% is disallowed.

Finally, the Court notes that this case should have been brought in Civil Court. Accordingly, the Court transfers the hearing on collection costs to Civil Court.

Accordingly, it is

ORDERED that the plaintiff's motion for summary judgment is granted on default, and the Clerk of the Court is directed to enter judgment in favor of plaintiff and against defendant in the sum of \$7,385.26, with interest at the statutory rate from the date of May 24, 2005, until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate, together with costs and disbursements as taxed by the Clerk; and it is further

ORDERED that this action is transferred to Civil Court by separate order; and there, plaintiff can obtain a hearing on fees pursuant to the terms of this order not to exceed the 15% for which it contracted.

Dated: 3/15/07

Lby
LOUIS B. YUCCA
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE