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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: YORK Justice PART 2

PUBLIC ADJUSTMENT BUREAU INC
- v -
SEWARD PARK HOUSING CORP

INDEX NO. 601202/05
MOTION DATE
MOTION SEQ. NO. 3
MOTION CAL. NO.

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

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION.

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

Dated: 10/2/07

LOUIS B. YORK J.S.C.
J.S.C.

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION
Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

Supreme Court of the State of New York
County of New York

Part 2

Index No. 601202/2005

PUBLIC ADJUSTMENT BUREAU, INC.,

Plaintiff,

– against –

GREATER NEW YORK MUTUAL INSURANCE CO. and SEWARD PARK HOUSING CORP.,

Defendants.

Decision/Order

Present:
Hon. Louis B. York
Justice, Supreme Court

In this case, PAB alleges that it rendered services to Seward in connection with the adjustment of a claim. Seward and PAB had entered into a contract pursuant to which, in exchange for its services, PAB was entitled to a percentage of the recovery of claims that were adjusted or otherwise recovered. Ultimately, the claim was not settled and the underlying action proceeded to a jury trial in this Court. At trial, Seward obtained a verdict of $15,447,830.71 plus interest, for a total of $18,296,480.74.

The parties disputed whether Seward owed PAB money under the contract, resulting in this litigation. In earlier motions in this action, the Court agreed with PAB that Seward might owe PAB money under the contract even though Seward obtained a jury verdict and did not settle the underlying case. However, the Court found that there was a question of fact as to whether PAB had performed services for Seward sufficient to trigger Seward's obligation to pay. Accordingly, it directed the parties to schedule a

hearing.

Ultimately, and after subsequent motion practice, the parties were scheduled to appear before this Court on Wednesday March 7, 2007 for a conference. At that point, they had begun settlement negotiations, and they orally agreed to settle the case. Under the oral agreement, Seward apparently agreed to pay PAB $500,000. PAB asked the Court to cancel the March 2007 conference, stating that the case had been settled. PAB also mailed a letter, settlement/release, and stipulation of discontinuance to Seward on April 13, 2007. According to PAB, Seward did not pay the settlement or sign any of the documents, but its counsel assured PAB's counsel that finalization of the agreement and payment under the agreement would be forthcoming promptly.

Around this time, on May 10, 2007, the First Department issued a decision in the underlying case, Seward Park Housing Corp. v. Greater New York Mutual Ins. Co., 43 A.D.3d 23, 836 N.Y.S.2d 99 (1st Dept. 2007)("Seward Park Housing Corp."). That decision modified the judgment of this Court on several grounds and remanded the case for a new trial. Shortly thereafter, on May 14, 2007, counsel for Seward sent an e-mail to PAB's counsel, stating that in light of the First Department's decision, Seward was going to make an application to the Court regarding Seward Park Housing Corp. Without denying the negotiation of the settlement agreement, Seward also stated that the settlement agreement between Seward and PAB "did not exist" under the law. This prompted PAB to bring the current motion to enforce the settlement agreement between itself and Seward.

Under CPLR Rule 2104,

> An agreement between parties or their attorneys relating to any matter in an action, other than one made between

> counsel in open court, is not binding upon a party unless it is in a writing subscribed by him or his attorney or reduced to the form of an order and entered. With respect to stipulations of settlement and notwithstanding the form of the stipulation of settlement, the terms of such stipulation shall be filed by the defendant with the county clerk.

The statute on its face "admits of no exceptions." Bonnette v. Long Island College Hosp., 3 N.Y.3d 281, 286, 785 N.Y.S.2d 738, 740 (2004). Relying on this principle, the Court of Appeals in Bonnette rejected a plaintiff's attempt to enforce a settlement agreement that had not been reduced to writing. Plaintiff is correct that in Bonnette, plaintiff had to purchase an annuity contract and obtain a waiver of Medicaid liens before signing the agreement, and that the former was a condition of the settlement. However, although in the instant case there were no outstanding conditions to be satisfied, the distinction is not legally significant. In Bonnette, the settlement terms were undisputed and the defendant conceded both its existence and its terms. Nonetheless, and despite various equitable considerations favoring the plaintiff, the Court of Appeals declined to enforce the unsigned settlement agreement, stating that to do so "would invite an endless stream of collateral litigation." Id. The Court of Appeals further stated that a contrary ruling would be antithetical to the State's "strong policy promoting settlement" because it would enable parties to enforce agreements that were not unequivocally "clear, final and the product of mutual accord." Id. at 286, 785 N.Y.S.2d at 741 In light of these principles and the strong statement by the Court of Appeals in Bonnette, the motion is denied.

Plaintiff's arguments to the contrary have no merit. Hallock v. State is distinguishable because in that case, the terms of the oral agreement had been discussed in open court and placed on the record. 64 N.Y.2d 224, 485 N.Y.S.2d 510

(1984). Plaintiff also asserts that it relied to its detriment on defendant's promise to settle when it asked the Court to mark the case settled. However, estoppel only applies in "rare instances," Bonnette, 3 N.Y.2d at 285, 785 N.Y.S.2d at 740, and plaintiff has not described the type of injury that is required. To minimize any inconvenience, this Court will restore the case to active status without requiring a motion. When plaintiff determines it is appropriate, plaintiff can simply send a letter to this Court and to defendant, indicating that it is ready for the case to be restored, in accordance with the decision dated October 2, 2007.

Accordingly, it is

ORDERED that the motion is denied.

ENTER:

Dated: October 2, 2007

Louis B. York, J.S.C.

LOUIS B. YORK
J.S.C.

FILED
OCT 12 2007
NEW YORK
COUNTY CLERK'S