

**Public Adjustment Bureau, Inc. v Greater N.Y. Mut.
Ins. Co.**

2014 NY Slip Op 30150(U)

January 16, 2014

Supreme Court, New York County

Docket Number: 601202/05

Judge: Louis B. York

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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
PUBLIC ADJUSTMENT BUREAU, INC.,
Plaintiff,
-against-

Index No. 601202/05
Motion Date 10/16/13
Motion Seq. No. 007
Motion Cal. No.

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

-----X
The following papers, numbered 1 to were read on this motion for Trial De Novo

PAPERS

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B).

Defendant moves to set aside the jury verdict in favor of plaintiff Public Adjustment Bureau against defendant Seward Park Housing Corp. After the Court had dismissed the action, plaintiff appealed to the Appellate Division, which remanded to this Court on the ground that whether valuable services was provided was a question of fact. It is that determination that the defendant now moves to set aside and dismiss.

Background

After a heavy storm, defendant sought to recover for the costs of the rebuilding of its garage from its insurance company, Greater New York Mutual Insurance Company (“GNY”). Defendant then engaged the services of the plaintiff. They agreed that for the

provision of valuable services, plaintiff would be awarded a certain percentage of the defendant's ultimate recovery. Plaintiff spent several unsuccessful months in a futile attempt to settle with the insurance company. It recommended a settlement amount to defendant, that amounted to less than half of any of the bids received by Seward Park, which was never used by it, but, ironically, used by plaintiff in support of its claims in the trial.

Plaintiff's attempt to settle this matter was unsuccessful and ended its activity on the case. Defendant then sued its insurance company. The litigation and trial took over ten years, resulting in a multi-million dollar settlement for defendant.

Discussion

Defendant subsequently rejected plaintiff's share of the settlement. Plaintiff then sued and moved for summary judgment for breach of contract and defendant cross-moved for summary judgment to dismiss the Complaint.

The Court granted Seward Park's motion and dismissed.

The Appellate Division remanded, stating that there is a question of fact about whether plaintiff provided any valuable services.

Defendant claims throughout the entire litigation plaintiff provided no valuable services to the adjustment of the claim. Defendant ceased assisting in the adjustment of the claim more than ten years ago and did not appear again to claim its percentage of the recovery until the settlement.

The trial record reveals that for ten years plaintiff's activities were dormant. Virtually none of the services during the ten years of litigation contributed to or were used by defendant in obtaining its settlement.

The plaintiff Public Adjustment Bureau counters the defendant's arguments by emphasizing the work it did prior to the initiation of this lawsuit. However, as defendant has shown in its Memorandum of Law, these activities were not used by plaintiff at trial, nor did they figure in the ultimate recovery.

The general rule regarding contingency agreements is that valuable services contributing to the defendant's recovery must be provided (*Douglas Real Estate v Montgomery Ward and Company*, 4 NY2d 33, 171 NYS2d [1958], [Plaintiff-managing agent entered into a contract for negotiating a lease. However, the contract ended before the lease was negotiated. Defendant then negotiated another lease without plaintiff's input - Verdict for defendant.] Subsequent trial court decisions have continued to follow the *Douglas Real Estate* Decision. See, *Jajarmouth Jajarmouth v Massey Realty Services*, 104 AD3d 564, 961 NYS2d 415 [1st Dept 2013][Broker negotiated first contract which was not consummated. Defendant lawyer negotiated a second contract which broker did not participate in - summary judgment in favor of defendant.]

See, the Insurance Department's Rule 11 ©, which holds that where a public adjuster performs no valuable services and another one does, and the claim is adjusted. The initial public adjuster is not entitled to recover.

Conclusion

The Court concludes that the valuable services that need to be provided must consist of continuous input that contributed to the settlement or adjustment of ~~plaintiff's~~^{the} claim. It is clear that no such input was made by plaintiff and, therefore, it is not entitled to any percentage of the settlement.

I have considered plaintiff's remaining arguments and find them to be without merit.

Accordingly, it is

ORDERED and **ADJUDGED** that defendant's motion to award a judgment to defendant notwithstanding the verdict and setting aside the verdict is granted; and it is further

ORDERED and **ADJUDGED** that this action is dismissed.

Dated: January 16, 2014

Enter:

ly
LOUIS B. YORK
J.S.C.
Louis B. York, J.S.C.

Check one: **FINAL DISPOSITION** **NON-FINAL DISPOSITION**

Check if appropriate: **UNFILED JUDGMENT DO NOT POST** **REFERENCE**

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