

People v Special Funds Conservation Comm.
2014 NY Slip Op 33788(U)
December 16, 2014
Supreme Court, New York County
Docket Number: 154920/2013
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

ACE FIRE UNDERWRITERS INSURANCE CO. c/o
SEDGWICK CMS,

Petitioner,

Index No.: 154920/2013

Motion Date: 11/01/2013

Motion Seq. No.: 01

- v -

SPECIAL FUNDS CONSERVATION COMMITTEE,

Respondent.

Motion Cal. No.: _____

The following papers, numbered 1 to 3 were read on this motion for judgment on petition.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____
Answering Affidavits - Exhibits _____
Replying Affidavits - Exhibits _____

PAPERS NUMBERED

1

2

3

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that the motion shall be denied and the petition shall be dismissed.

Respondent The Special Funds Compensation Committee ("The Committee") is correct that Workers Compensation Law §15(8) contains no language that allows Ace Fire Underwriters Insurance Company ("Insurance Company"), petitioner workers' compensation carrier, to obtain a compromise order from this Court of a settlement of a third-party action under which the Insurance Company seeks reimbursement from The Committee of workers'

Check One: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION
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☐ SETTLE/SUBMIT ORDER/JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING

compensation benefits paid by the Insurance Company to an employee, plaintiff in that third-party action. Such silence contrasts with the provisions of Workers Compensation Law §29(5) that permit an employee or his/her dependents to obtain a compromise order from a justice of the court in which the third-party action is pending that approves a settlement of such third party action, timely or nunc pro tunc, where the employee or dependents is/are entitled to receive workers' compensation benefits (Medina v Phillips, 88 AD3d 524 [1st Dept 2011]).

Matter of Selective Ins Co of Am v State of NY Workers' Compensation Bd, 102 AD3d 72 (3d Dept 2012) makes clear that plaintiff insurance carrier must seek an administrative determination by the NYS Workers Compensation Board, whether nunc pro tunc or otherwise, of its application for approval of its request for reimbursement from respondent Committee. See also Matter of Catapano v Jaw, Inc, 73 AD3d 1361 (3d Dept 2010).

Matter of Catapano, supra and Matter of Selective Ins Co of Am, supra, appear to be in conflict as to whether such Workers' Compensation Board determination would be subject to direct appeal to the Appellate Division, Third Department pursuant to Workers' Compensation Law §23 (Matter of Lubrano v New York State Workers' Compensation Bd, 83 AD2d 841 [3d Dept 1981]) or to review of this Court pursuant to CPLR Article 78. In any event, this proceeding may not be maintained either because without a

final and binding determination it is premature or because recourse to this Court pursuant to CPLR Article 78 is interdicted by the exclusive jurisdiction of the Appellate Division, Third Department pursuant to Workers' Compensation Law, § 23.

Accordingly, it is

ORDERED that petitioner's motion for an Order pursuant to Workers' Compensation Law § 29(5) seeking a Nunc Pro tunc consent to settlement of Ramirez v Lexington Bakery Corp, New York County Supreme Court Index No. 111327/2008 is denied.

This is the decision and order of the court.

Dated: December 16, 2014

ENTER:

J.S.C.