

**HSBC Bank, USA, N.A. v Sum C. Hui**

2017 NY Slip Op 32163(U)

October 12, 2017

Supreme Court, New York County

Docket Number: 850129/13

Judge: Robert D. Kalish

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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 29**

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HSBC BANK, USA, N.A.,

Plaintiff,

Index No. 850129/13

- against -

Seq. 006

SUM C. HUI; BOARD OF MANAGERS OF THE  
310 WEST 52ND STREET CONDOMINIUM A/K/A  
THE LINK CONDOMINIUM; NEW YORK CITY  
ENVIRONMENTAL CONTROL BOARD,

**Decision and Order**

Defendants.

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**HON. ROBERT D. KALISH, J.:**

Motion by defendant Board of Managers of the 310 West 52nd Street Condominium A/K/A The Link Condominium (“Condominium”) for an order, pursuant to CPLR 4403, confirming a Judicial Hearing Officer’s report/transcript dated May 23, 2017, directing judgment in accordance with its recommendations, and directing the distribution of the recommended sums is denied as follows.

**BACKGROUND**

Plaintiff HSBC Bank, USA, N.A. commenced the underlying action on May 15, 2013 by means of a summons and complaint seeking to foreclose a mortgage granted to defendant Sum C. Hui (“Hui”). Hui failed to answer or otherwise appear in the action. On October 9, 2014, the Supreme Court of the State of New York,

New York County, Milton A. Tingling, J.S.C., presiding, appointed a special referee to determine the amount due to Plaintiff on the note and mortgage.

On March 21, 2016, this Court issued an Order and Judgement of Foreclosure and Sale and Bill of Cost for the premises in question—designated as Block 1042, Lots 1189 and 1323 on the tax map of the County of New York, and commonly known as Unit 17C and Storage Unit 8, located at 310 West 52nd Street, New York, New York, 10019—and appointed Charles Sidney Lester, Esq. as referee to sell the premises at a public auction. The referee sold the premises at a public auction on September 21, 2016 and filed a Referee's Report of Sale on November 17, 2016, and filed an amended Referee's Report of Sale on April 11, 2017. As per the amended report, after satisfying the Plaintiff's judgment there remains a surplus in the amount of \$416,154.93. On March 16, 2017, Condominium moved to confirm the Referee's Report of Sale and sought payment of a lien and other costs out of the surplus in the amount of \$60,715.82.

This Court, in an order dated April 12, 2017 deciding Motion Seq. 004, confirmed the Referee's Report of Sale and referred the matter as to the distribution out of the surplus monies to a special referee or Judicial Hearing Officer ("JHO") and directed that the special referee or JHO hear and report the reasonable amount due and owing to Condominium.

This Court had reviewed the affidavit from Motion Seq. 004 of Todd J. Amoroso, an employee of Condominium's managing agent, who provided the following breakdown of monies allegedly due and owing to Condominium prior to the Referee's Report of Sale: (a) \$32,797.44, representing common charges assessed from July 2012 to October 2016; (b) \$414.08, representing common charges assessed from November 1, 2016 to November 16, 2016; (c) \$3,355.30, representing assessment charges due for Fannie-Mae reserve fund requirements from July 2012 to October 2016; (d) \$41.60, representing assessment charges due for Fannie-Mae reserve fund requirements from November 1, 2016 to November 16, 2016; (e) \$7,050.00, representing late fees for Hui's failure to pay amounts due and owing from July 2012 to November 2016; (f) \$5,593.79, representing charges for electricity consumed between July 2012 and October 2016; (g) \$1,812.77, representing charges for repairs; and (h) \$7,870.84, representing legal fees for collection efforts between July 2012 and October 2016. (Amoroso Aff., Motion Seq. 004, ¶ 12.) Hui also allegedly owed \$1,780.00 in post-sale legal fees for collection efforts. (*Id.*) Taken together, the breakdown of the total amount allegedly owed to Condominium was \$51,064.98 in non-legal charges and \$9,650.84 in legal fees. The Court also reviewed Condominium's Monthly Tenant Activity Summary, the managing agent's record of charges Hui allegedly owed to Condominium from

July 2012 through November 2016. (Amoroso Aff., Motion Seq. 004, Ex. C.)

As directed by this Court's decision in Motion Seq. 004, the appointed JHO held a hearing on May 23, 2017. Condominium was the only party in this action that appeared for said hearing. After the hearing, the JHO did not issue a separate report evaluating the reasonableness of the amount allegedly due and owing to Condominium. Rather, the JHO signed a decision and order, dated May 23, 2017, annexing a copy of the hearing transcript, which is commonly done. With respect to the issue of the reasonableness of the non-legal charges allegedly due and owing to Condominium, the following colloquy took place between the JHO and Mr. Amoroso, who Condominium produced at the May 23, 2017 hearing as a witness:

JHO: The [managing agent's] office maintained records concerning common charges and other monies that condominium unit owners are obligated to pay under the By-Laws of the condominium; is that correct?

MR. AMOROSO: Yes.

JHO: Those records are kept with respect to Mr. -- what unit is this?

MR. AMOROSO: Apartment 17C.

JHO: What do the records indicate with respect to -- I assume these are records maintained in the regular course of business of the agent?

MR. AMOROSO: Yes.

JHO: What do the records indicate that was owed with respect to this particular unit?

THE WITNESS: 51,000 --

JHO: 61 or 51?

MR. AMOROSO: 51064 -- 51,064.98.

JHO: That was due as of what date?

MR. AMOROSO: November 16th, 2016.

JHO: Are there any other charges with respect to the unit, leaving aside attorney's fees?

MR. AMOROSO: Yes -- electric, miscellaneous repairs.

JHO: Electric is how much?

MR. AMOROSO: The electric charges -- one second. The total --

JHO: This 51,064.98 includes all charges?

MR. AMOROSO: All charges, yes.

JHO: Just tell me, in addition to maintenance or common charges, there is electric charges. What else?

MR. AMOROSO: Repairs.

JHO: The unit had to be repaired as a result of the action of the unit owner?

MR. AMOROSO: Yes.

JHO: What else?

MR. AMOROSO: Some late fees and we have a Fannie Mae assessment for the reserves?

JHO: All right.

(JHO's Hearing Transcript at 4:07–5:23.)

With respect to the issue of the reasonableness of legal fees allegedly due and owing to Condominium, the following colloquy took place between the JHO and Lauren Piechocki, counsel for Condominium:

JHO: What are you seeking as attorney's fees here?

MS. PIECHOCKI: 18,575 in attorney's fees and \$3,812.19 in costs.

JHO: Let's go over the costs. Tell me about that.

MS. PIECHOCKI: The costs relate to Westlaw research, photocopying in connection with the motion and other documents we had to send out.

JHO: Let's take out the Westlaw research and take out the photocopying. What are you left with?

MS. PIECHOCKI: One moment, your Honor.

(Pause in the proceedings).

MS. PIECHOCKI: I think, we are looking at \$190.26.

JHO: What's that?

MR. AMOROSO: 190 -- I said.

JHO: That's what is left after we take out --

MS. PIECHOCKI: If we take out the photocopies and research.

JHO: \$190.26.

The 18, 575 represents whose time? Your time in connection with this litigation?

MS. PIECHOCKI: My time and the other associates in my office.

JHO: How many associates are -- are you an associate or partner?

MS. PIECHOCKI: Associate.

JHO: How many associates, in addition to yourself, worked on this case?

MS. PIECHOCKI: There are two. Well, one associate that is now a partner.

JHO: Your hourly rate is what?

MS. PIECHOCKI: At the time I started working on the matter it was 275. Now it's 325.

JHO: The other associate?

MS. PIECHOCKI: They range from 275 to 495.

JHO: A partner worked on this?

MS. PIECHOCKI: Yes.

JHO: What is his/her range?

MS. PIECHOCKI: Her rate is 415.

JHO: Now, you went to what law school?

MS. PIECHOCKI: Hofstra.

JHO: You graduated in what year?

MS. PIECHOCKI: 2011.

JHO: And during the last, I guess six years, what have you been doing?

MS. PIECHOCKI: I have been working at Braverman Greenspun as an associate.

JHO: Doing what type of work?

MS. PIECHOCKI: Cooperative and condominium work. I do general condominium work, and I work in general counsel, transactional, and litigation work for the firm.

JHO: The other associates, are you familiar with their background and experience?

MS. PIECHOCKI: The other associate, who unfortunately is no longer with the firm, he was also a graduate of Hofstra.

JHO: He graduated with you?

MS. PIECHOCKI: He graduated a few years later and then the associate that is now a partner is Ms. Ringston, who is sitting next to me.

JHO: Did this case involve, I see a lot of papers in front of you. This case involve any particular questions or difficulties?

MS. PIECHOCKI: The collection of the arrears started in 2013, and we have had to track and deal with the auction of the unit, making sure that the title was transferred properly. We were advised that there was going to be a surplus. We obviously wanted to insure [sic] that was going to happen, and then, we needed to make this instant motion to obtain the surplus.

JHO: This pile of papers, if we pile them up, all represent work done on this particular case?

MS. PIECHOCKI: Yes, your Honor.

JHO: All right.

(JHO's Hearing Transcript at 6:09–9:16.)

At the conclusion of the May 23, 2017 hearing, based upon the transcript, the JHO recommended to the Court that Condominium be paid the following out of the surplus: (1) \$51,064.98, plus statutory interest from November 16, 2016 to the date of entry of the JHO's judgment in favor of Condominium, for the recovery of non-legal charges; (2) \$18,575.00, for the recovery of attorney's fees; and (3) \$190.26, for the recovery of disbursements. (JHO's Hearing Transcript at 9:16–10:04.)

### ANALYSIS

Pursuant to CPLR 4403, the Supreme Court has the power to “confirm or reject, in whole or in part . . . the report of a referee” and may “make new findings with or without taking additional testimony” or “order a new trial or hearing.” (*See*

*Matter of Frontier Ins. Co.*, 73 A.D.3d 36, 42–43 [3d Dept 2010]; *Stein v American Mortg. Banking*, 216 A.D.2d 458 [2d Dept 1995].) “Generally, the recommendations and report of a referee should be confirmed as long as they are substantially supported by the record and the referee has clearly defined the issues and resolved matters of credibility.” (*IG Second Generation Partners, L.P. v Kaygreen Realty Co.*, 114 A.D.3d 641, 643 [2d Dept 2014], citing *Spodek v Feibusch*, 55 A.D.3d 903 [2d Dept 2014]; see also *Matter of County Conduit Corp.*, 49 A.D.3d 641 [2d Dept 2008]; *Stone v Stone*, 229 A.D.2d 388 [2d Dept 1996].)

Pursuant to this Court’s order dated April 12, 2017 deciding Motion Seq. 004, the Court directed that the appointed special referee or JHO

“hear and report to this Court on the following individual issues of fact . . .

- 1) the issue of the reasonableness of Condominium’s claim to a distribution of surplus funds to satisfy the monies allegedly due and owing to Condominium representing common charges, electricity, repairs, late fees, and other non-legal charges and assessments; and
- 2) the issue of the reasonableness of Condominium’s claim to a distribution of surplus funds to satisfy the monies allegedly due and owing to Condominium for attorney’s fees representing legal fees incurred in connection with Condominium’s collection efforts between July 2016 and October 2016; and
- 3) the issue of the reasonableness of Condominium’s claim to a distribution of surplus funds to satisfy the monies allegedly due and owing to Condominium for attorney’s fees representing legal fees incurred in connection with Condominium’s post-sale collection efforts.”

(Piechocki Affirm. Ex. H at 5.)

“Notwithstanding that the instant motion is unopposed, the Court cannot, *on these papers*, determine the *reasonableness* of [Condominium’s] claim.” (*Id.* at 4 [emphases added] [internal citation omitted].)

Here, with respect to issue number one, the non-legal charges allegedly due and owing to Condominium in the amount of \$51,064.98 plus statutory interest, the JHO’s May 23, 2017 report/transcript provides no evaluation as to the *reasonableness* of this amount for the record. Although Mr. Amoroso testified at the JHO’s hearing that the managing agent’s records indicate \$51,064.98 is due and owing to Condominium, he did not testify as to any dollar-amount breakdown of the individual charges (e.g., common charges, late fees, electricity, repairs) comprising that amount or, critically, the reasonableness of either any individual charge or the whole of the alleged amount due and owing. As such, there is not sufficient testimony before the Court indicating that Condominium’s claim to \$51,064.98 in non-legal charges out of the surplus is credible or reasonable.

A reasonable attorney’s fee is commonly understood to be a fee representing the reasonable value of the services rendered. (*Diaz v Audi of America, Inc.*, 57 A.D.3d 828 [2d Dept 2008].) Factors to weigh in determining such reasonableness include: (1) the time and labor required, the difficulty of the questions involved, and the skill required to handle the problems presented; (2) the lawyer’s experience,

ability and reputation; (3) the amount involved and benefit resulting to the client from the services; (4) the customary fee charged for similar services; (5) the contingency or certainty of compensation; (6) the results obtained; and (7) the responsibility involved. (*In re Sucheron*, 95 A.D.3d 892 [2d Dept 2012].)

Here, with respect to issues two and three, the legal fees alleged previously to be due and owing to Condominium in the amount of \$9,650.84—and alleged in the instant motion to be due and owing to Condominium in the amount of \$18,575.26 (plus \$190.26 in disbursements)—the Court finds in the record neither an analysis as to the reasonableness of either of these figures nor an explanation as to why the legal fees allegedly due and owing roughly doubled from March to May of 2017.

Based on questioning by the JHO, the record indicates a range of hourly rates charged by attorneys for Condominium on this matter but does not indicate how many hours were billed by a given attorney on a task. While there is some review of the attorney's background—their education and level of experience—there is no billing record showing the actual work involved. The facts in the report/transcript do not allow for a finding of whether Condominium's counsel's alleged attorney's fees were at or around the amount customarily charged for similar services or whether the number of hours billed was appropriate for the task(s) completed. Critically, due to the apparent \$8,924.42 increase in attorney's fees allegedly owed

to Condominium from March to May 2017, the Court requires additional explanation of the billing before it can approve such a recommendation.

Based upon the papers submitted, and having reviewed the report/transcript of the hearing by the JHO and the recommendations set forth therein, the Court again refers the matter to a JHO or special referee for a further hearing and report on the foregoing issues. As such, the instant motion is denied.

**CONCLUSION**

Accordingly, it is hereby

ORDERED that Condominium's request for the Court to confirm the JHO's report is denied; and it is further

ORDERED that a JHO or special referee shall again be designated to hear and report to this Court on the following individual issues of fact:

1) the issue of the reasonableness of Condominium's claim to a distribution of surplus funds to satisfy the monies allegedly due and owing to Condominium representing common charges, electricity, repairs, late fees, and other non-legal charges and assessments; and

2) the issue of the reasonableness of Condominium's claim to a distribution of surplus funds to satisfy the monies allegedly due and owing to Condominium for attorney's fees representing legal fees incurred in connection

with Condominium's collection efforts between July 2016 and October 2016; and

3) the issue of the reasonableness of Condominium's claim to a distribution of surplus funds to satisfy the monies allegedly due and owing to Condominium for attorney's fees representing legal fees incurred in connection with Condominium's post-sale collection efforts.

And it is further

ORDERED that a copy of this order with notice of entry shall be served on the Clerk of the Reference Part (Room 119A) to arrange for a date for the reference to a JHO or special referee and the Clerk shall notify all parties of the date of the hearing.

The Foregoing constitutes the ORDER and Decision of the Court.

Dated: October 1<sup>st</sup>, 2017  
New York, New York

ENTER:



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J.S.C.  
**HON. ROBERT D. KALISH**  
J.S.C.