

**New York Black Car Operators' Injury Compensation
Fund Inc. v Silberstein, Awad & Miklos, P.C.**

2025 NY Slip Op 30241(U)

January 21, 2025

Supreme Court, New York County

Docket Number: Index No. 453267/2023

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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INDEX NO. 453267/2023

THE NEW YORK BLACK CAR OPERATORS' INJURY
COMPENSATION FUND INC.,

MOTION DATE 06/13/2024

Plaintiff,

MOTION SEQ. NO. 001

- v -

SILBERSTEIN, AWAD & MIKLOS, P.C., EDUARDO
ECHEVERRIA

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for

JUDGMENT - SUMMARY

Upon the foregoing documents, and a final submission date of October 29, 2024, Plaintiff The New York Black Car Operator’s Injury Compensation Fund Inc.’s (“Plaintiff”) motion for summary judgment against Defendants Silberstein, Awad & Miklos, P.C. and Eduardo Echeverria (“Echeverria”) (collectively “Defendants”) is granted.

I. Background

This is an action for damages for breach of contract and fiduciary duty in failing to pay a workers’ compensation lien under Workers’ Compensation Law § 29 (*see generally* NYSCEF Doc. 1). On June 1, 2019, Echeverria was injured in the course of his employment. Subsequently, Plaintiff paid Echeverria \$122,587.24 in workers’ compensation benefits. Before February 22, 2022, Echeverria retained Silberstein, Awad & Miklos, P.C., who commenced a personal injury action arising from the same accident, and settled same for \$25,000.00. At that time, Plaintiff asserted a worker’s compensation lien of \$72,587.24. Silberstein, Awad & Miklos, P.C. retained the settlement proceeds and has not satisfied the lien (NYSCEF Doc. 11).

Plaintiff now moves to recover \$16,666.67, plus interest from July 5, 2022 at the statutory rate of 9% per annum. Plaintiff also moves to recover the costs and disbursements of this action. Silberstein, Awad & Miklos, P.C. is willing to pay Plaintiff the \$16,666.67. However, Silberstein, Awad & Miklos, P.C. argues it is unable to distribute the funds to Plaintiff absent Echeverria's consent or a Court Order. Further, Silberstein, Awad & Miklos, P.C. requests Plaintiff's motion not be granted with interest.

II. Discussion

Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact" (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party's "burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party" (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial (*See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Pemberton v New York City Tr. Auth.*, 304 AD2d 340, 342 [1st Dept 2003]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment (*see Banco Popular North Am. v Victory Taxi Mgt., Inc.*, 1 NY3d 381 [2004]).

A Workers' Compensation lien attaches to the settlement proceeds of any action against the wrongdoer after deduction of the reasonable and necessary expenditures, including attorneys' fees, incurred obtaining the settlement (*Stedman v City of New York*, 107 AD2d 600, 601 [1st Dept 1985]; Workers' Compensation Law § 29[1]). A party who settles a third-party action for less than the compensation benefits payable under the Workers' Compensation Law must obtain the written

consent of the carrier or a court order approving the settlement (Workers' Compensation Law § 29[5]). The legal enforceability of the lien does not depend upon the identity of the party having possession or control of the settlement proceeds (*Comm'rs of the State Ins. Fund v Gyeltzen*, 2015 NY Slip Op 30164[U] [Sup Ct, NY County 2015]).

Here, Plaintiff has tendered evidence sufficient for entitlement to summary judgment. It is undisputed that Silberstein, Awad & Miklos, P.C. settled without Plaintiff's consent and failed to repay the lien. Silberstein, Awad & Miklos, P.C. has failed to raise a material issue of fact. Specifically, it argues it is not personally liable to Plaintiff because it has not disbursed the settlement proceeds. However, in failing to promptly satisfy Plaintiff's lien, Silberstein, Awad & Miklos, P.C. is personally liable to Plaintiff (*see Motor Vehicle Accident Indemnification Corporation v Bader & Yakaitis LLP*, 167 Misc 3d 1240[A], 2020 NY Slip Op 50798[U], *2 [Sup Ct, NY County 2020]). Further, the Court is not persuaded by Silberstein, Awad & Miklos, P.C.'s argument that Plaintiff is not entitled to pre-judgment interest because no judgment has been entered. "In the event that a claimant recovers in a third-party action, the compensation carrier is granted a lien on the amount of recovery proceeds equal to the amount of past compensation it has paid, with interest" (*Kelly v State Ins. Fund*, 60 NY2d 131, 136 [1983]). Therefore, Plaintiff's motion for summary judgment against Silberstein, Awad & Miklos, P.C. is granted, and Plaintiff is entitled to the settlement proceeds, plus interest.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for summary judgment against Silberstein, Awad & Miklos, P.C. is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of Plaintiff against Silberstein, Awad & Miklos, P.C. in the amount of \$16,666.67 plus daily statutory interest

from July 5, 2022, and costs and disbursements, as calculated by the Clerk of the Court; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on the Defendants; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

1/21/2025
DATE

Mary V Rosado JSC
HON./MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE