

Tomkiel & Tomkiel v Main St. Am. Assur. Co.

2025 NY Slip Op 35041(U)

December 26, 2025

Supreme Court, New York County

Docket Number: Index No. 150641/2024

Judge: James d'Auguste

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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. James E. d'Auguste PART 55

Justice

-----X

TOMKIEL & TOMKIEL,

Plaintiff,

- v -

MAIN STREET AMERICAN ASSURANCE COMPANY,
AMERICAN FAMILY INSURANCE CLAIMS SERVICES,
INC., NGM INSURANCE COMPANY, MAIN STREET
AMERICA GROUP, SEDGWICK CLAIMS MANAGEMENT
SERVICES, MANUEL DELEGTENELANDA, ILIANA G.
PALMA,

Defendants.

-----X

INDEX NO. 150641/2024
01/23/2024,
10/30/2025,
10/31/2025,
MOTION DATE 10/31/2025
MOTION SEQ. NO. 001 004 005
006

DECISION + ORDER ON MOTION

Appearances:

Tomkiel & Tomkiel, Esqs. (Matthew Tomkiel and Stanley Tomkiel, of counsel) of White Plains, NY, for petitioner Tomkiel & Tomkiel
Callahan & Fusco LLC (Christopher del Bove, of counsel) of New York, NY, for respondents Main Street American Assurance Company, Inc., American Family Insurance Claims Services, Inc., and Main Street America Group
Cherry, Edson & Kelly LLP (Ralph Magnetti and Heather McMahan, of counsel) of Tarrytown, NY, for respondents Ngm Insurance Company and Sedgwick Claims Management Services
Law Firm of Jason A. Brustman (Jason Brustman and Wendy Herlands, of counsel), of West Harrison, NY, and Barry Salman, of New Rochelle, NY, for respondent Manuel Delegetenelanda
Iliana G. Palma, of Yonkers, NY, self-represented respondent

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 50, 51, 52, 53, 60, 75, 76, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 121, 122, 124, 126

were read on this motion to/for MONEY JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 004) 128, 129, 130, 139, 142, 145, 148

were read on this motion to/for MODIFY

The following e-filed documents, listed by NYSCEF document number (Motion 005) 135, 136, 137, 138, 141, 144, 147

were read on this motion to/for MODIFY

The following e-filed documents, listed by NYSCEF document number (Motion 006) 131, 132, 133, 134, 140, 143, 146, 149

were read on this motion to/for

MODIFY

The parties' respective motions to reject the report and recommendation dated October 16, 2025, in Motion Seq. Nos. 001 and 002, and published at 2025 N.Y. Misc. LEXIS 8104 (Brian Krist, Special Master), in whole or part are consolidated for decision. The Court assumes the parties' familiarity with the relevant facts and does not repeat them here. Upon the papers presented, the Court grants petitioner's motion (Motion Seq No. 004) in part, denies moving respondents' respective motions to reject the report (Motion Seq. Nos. 005 and 006), and confirms the report in the manner and for the reasons set forth below.

At the outset, moving respondents' scope-based objections to the report are misplaced. The special master issued a report with recommendations following a hearing, after which the parties had the opportunity to object by motion. (Tomkiel Aff. in Opp., NYSCEF Doc. 143, ¶ 2). The special master conducted a hearing as directed, made findings based upon that hearing, offered a proposed resolution to the parties' dispute based upon those findings, and stated why, because that is precisely what is required. *See, e.g., Shillingford v. Saxe*, 38 Misc. 3d 134(A), *1 (App. Term, 1st Dept. 2013) (reversing and remanding due in part to insufficient report). Moreover, as the special master correctly noted, "the Appellate Divisions have been consistent and clear that any ambiguity in a court's reference is properly resolved by motion practice to confirm the resulting report." Report, at *5, *citing, Clark v. Clark*, 55 A.D.2d 985, 985 (3d Dept. 1977); and *Minnesota Mining & Manufacturing Co. v. Technical Tape Corp.*, 18 A.D.2d 679 (2d Dept. 1962). The First Department has been clear on the issue as well, noting that the Court "has the right to refer the parties' dispute to a referee for a hearing and report...even in the absence of the parties' consent," and that the remedy to a wayward referee exceeding their reference is simply motion practice to reject the referee's conclusions. *Matter of Shaun C.S. v. Kim N.M.*, 181 A.D.3d 528, 529-530 (1st Dept. 2020). As moving respondents have already done in these motions precisely what the Appellate Divisions prescribe as their remedy, there is nothing else to do on the matter, even if the Court found (which it does not) that the special master had exceeded his scope.

Turning to the merits, the report should be confirmed. Contrary to moving respondents' arguments, the special master's recommendations do not impair any of their potential

indemnification or contribution claims against respondent Tenelanda. Rather, the report contemplates unwinding the settlement distribution to Tenelanda that gave rise to this proceeding to enforce an attorney's lien, paying petitioner law firm in satisfaction of its lien, as should have been done at the time of settlement, and redistributing the remaining settlement funds. Moving respondents' indemnification or contributions claims remain alive and enforceable. However, the evidentiary hearing established that moving respondents knew (constructively, at the least) of petitioner's involvement and their claims to settlement proceeds, and chose to pay Tenelanda "knowing full well that petitioner had a lien on the settlement that was superior to their interests." Report, at *6. Yet, that choice came with risk, which this proceeding has illustrated. *See, e.g., Benlevi v. Rukaj*, 2024 N.Y. Misc. LEXIS 5139, *15-16 (Civ. Ct., New York Co. 2024) (litigant's tactical choices were an aggravating factor in anti-SLAPP damages).

Moreover, "the subject matter of special proceedings are limited," and "certainly do not encompass the subject matter of...a simple breach of contract claim," like alleged indemnification agreements. *Park v. DeJonge*, 83 Misc. 3d 1293(A), *2 (Sup. Ct., Kings Co. 2024). The narrow purpose of the special proceeding before the Court is whether petitioner should be paid from the settlement proceeds and, if so, how much. Whatever other efforts respondents need to undertake to square their responsibilities to each other are more than capable of being addressed in subsequent plenary actions; the issue for which an accelerated special proceeding is permitted is the narrow question of petitioner's compensation from the settlement. The remainder can be dealt with in a plenary action.

As to the amount of petitioner's compensation, petitioner's objections are misplaced. Courts have often noted, and it bears repeating, that "[t]rial courts need not, and indeed should not, become green-eyeshade accountants," and that "the essential goal...is to do rough justice, not to achieve auditing perfection" in assessing claims for attorneys fees. *Union Funding Source, Inc. v. GLH Delivery Servs., Inc.*, 2025 N.Y. Misc. LEXIS 8144 (Sup. Ct., Nassau Co. Oct. 14, 2025). Where, as here, the special master "has held an evidentiary hearing, made credibility determinations, and issued detailed findings...the court retains ultimate decision-making authority but generally defers to the...factual findings unless they are clearly erroneous or against the weight of the evidence." *Walking on Wood, Inc. v. Aghassipour*, 2025 NY Slip Op 34438(U), *2-3 (Sup. Ct., New York Co. Nov. 19, 2025) (cleaned up).

Regardless, “even if the Court were to re-evaluate the record without the deference required...the Court would reach the same conclusion.” *Fairouz v. Bennett Moving & Storage*, 2025 NY Slip Op 34396(U), *10 (Sup. Ct., New York Co. Nov. 24, 2025). Taking the “overall sense of a suit,” as precedent supports, the special master’s recommendation was that “petitioner may enforce the equivalent of its contingency agreement upon a half million dollars, equaling \$166,500.00, plus petitioner’s claimed disbursements of \$2,274.78, for a total of \$168,774.78 with interest from the date of the discontinuance of the underlying action,” for the reasons stated in the report. Report, at *6.

Conclusion

The moving parties not having established a basis to disturb the special master’s report and recommendation, and the Court finding no clear error in it, the Court will confirm it.

Accordingly, it is

ORDERED that petitioner’s motion to confirm the report and recommendation in this proceeding dated October 16, 2025, in part and reject it in part and calendared as Motion Seq. No. 004 is granted in part and denied in part; and it is further

ORDERED that moving respondents’ motions to reject the report and calendared as Motion Seq Nos. 005 and 006 are denied; and it is further

ORDERED that the report in confirmed in full; and it is further

ORDERED that the Clerk amend the caption of this action from *Tomkiel & Tomkiel v. Main Street American Assurance Company, Inc.; American Family Insurance Claims Services, Inc.; Ngm Insurance Company; Main Street America Group; Sedgwick Claims Management Services; Manuel Delegtenelanda; and Iliana G. Palma* to *Tomkiel & Tomkiel v. Main Street American Assurance Company, Inc.; American Family Insurance Claims Services, Inc.; NGM Insurance Company; Main Street America Group; Sedgwick Claims Management Services; Manuel Deleg Tenelanda, also known as Manuel Delegtenelanda; and Iliana G. Palma*; and it is further

ORDERED that the special master’s report dated and entered May 2, 2025, is confirmed in full; and it is further

ORDERED that the parties’ stipulation of partial discontinuance filed in this action as NYSCEF Doc. No. 89 is so-ordered; and it is further

ORDERED that this proceeding is discontinued as against respondent Iliana G. Palma without prejudice; and it is further

ORDERED that the petition in this proceeding calendared as Motion Seq. No. 001 is granted in part to the extent set forth below; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of petitioner and against Main Street American Assurance Company, Inc.; American Family Insurance Claims Services, Inc.; NGM Insurance Company; Main Street America Group; Sedgwick Claims Management Services; and Manuel Deleg Tenelanda, also known as Manuel Delegtenelanda in the amount of \$168,774.78 together with the costs and disbursements of this proceeding to the extent permitted by law, with interest from January 11, 2024; and it is further

ORDERED that Main Street American Assurance Company, Inc.; American Family Insurance Claims Services, Inc.; NGM Insurance Company; Main Street America Group; Sedgwick Claims Management Services; and Manuel Deleg Tenelanda, also known as Manuel Delegtenelanda, transfer the proceeds of the settlement at issue in this proceeding within their respective care, custody, or control in this proceeding to petitioner forthwith, to be held in petitioner’s trust account pending redistribution after satisfaction of petitioner’s lien as found enforceable above; and it is further

ORDERED that any counterclaims or cross-claims in this proceeding are severed and this decision is without prejudice to respondents seeking judgment against Tenelanda for indemnity, contribution, or other similar relief in a plenary action; and it is further

ORDERED that any other relief sought in this proceeding and not expressly granted or denied above has been considered and denied.

This constitutes the Decision and Order of the Court.

12/26/2025
DATE

Hon. James d’Auguste, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: