

**BEFORE THE COURT-APPOINTED REFEREE
IN RE LIQUIDATION OF THE HOME INSURANCE COMPANY
DISPUTED CLAIMS DOCKET**

**In Re Liquidator Number: 2005-HICIL-15
Proof of Claim Number: CLMN380542
Claimant Name: MADELYN MILLER**

CLAIMANT'S WRITTEN SUBMISSION

SUMMARY STATEMENT OF ISSUES

No appellate court in New York ever reached the merits of Claimant's claim, the substance of which was outlined in her Mandatory Disclosures dated February 23, 2006. Due to the circumstances surrounding the dismissal of her appeal on October 12, 1994, it is highly debatable whether Claimant had a full and fair opportunity to litigate her claim in New York. The New York proceedings should not be given preclusive effect nor full faith and credit in New Hampshire.

ARGUMENT

An assertion is made on page two of the Liquidator's Summary Statement dated March 27, 2006, that, "The underlying facts giving rise to Claimant's claim...have been presented to and rejected by duly sanctioned trial and appellate courts of the State of New York." However, that contention is inaccurate. The crux of Claimant's claim, as outlined in her Mandatory Disclosures, was the failure of the insureds Kelner & Kelner, while acting in the course of their professional duties, to obtain the correct amount of interest on Claimant's judgment against the State of New York. Neither the Appellate Division, nor any other appellate court in New York ever reached the merits of Claimant's case.

The order of Judge Thomas Adams, cited by the Liquidator as Case File tab J was in error. In dismissing the case, he cited bifurcated personal injury actions wherein the liability and damages aspects of the referenced cases were tried seriatim and involved the application of New York CPLR 5002 pertaining to prejudgment interest. However, Claimant's case before the State of New York had not been bifurcated, and as she previously discussed, the judgment was subsequently *modified* by the appellate court. Said modification was retro-active to date of original judgment and involved the application of New York CPLR 5003 pertaining to post-judgment interest, not CPLR 5002.

Claimant took an appeal from that order, *pro se*, and she submitted the appellate papers and paid the requisite filing fee by check to the Court (Exhibit 1), which cashed same on July 5, 1994, believing that she had perfected the appeal. Subsequently, the appeal was removed from the calendar by the Court Clerk as indicated in his letter dated July 6, 1994 (Exhibit 2) in an act that Claimant believes was highly improper, as the facts as depicted in that letter were later shown to be inaccurate. However, Claimant never received that letter (Exhibit 3), nor the shipment of her papers in August, 1994, which was received and refused by some other party as indicated in the UPS Tracer (Exhibit 4).

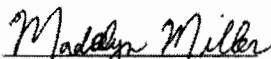
In fact, despite having provided a valid address, Claimant received *no notification whatsoever* pertaining to the Clerk's action, and as outlined in her letter dated March 30, 1995 (Exhibit 5), she was not given correct information about the appeal's status when she made multiple inquiries by telephone to the Appellate Division Clerk's office. Then, the appeal was placed on the dismissal calendar, published in the New York Law Journal and via that publication alone, the *pro se* Claimant was given notice to cure a default which she did not know existed. And that is how her appeal came to be dismissed (Liquidator's

Case File tab L). Then, one could say, and Claimant is indeed saying, that the insureds and their insurer had a victory to which they were not entitled.

The Liquidator's other exhibits pertain to the unsuccessful attempts of Claimant to re-instate the appeal itself, first by seeking a vacatur of the dismissal order (Liquidator's Case file tabs M, N, O) and then by seeking a writ of mandamus (Liquidators's Case file tabs P, Q, R, S, T), leaving the merits of the underlying claim unaddressed by any appellate court. Due to the circumstances surrounding the dismissal of the appeal, it is at the very least, highly debatable whether Claimant had a full and fair opportunity to litigate that claim in New York.

Claimant would argue that she did not, that the New York proceedings should not be given preclusive effect nor full faith and credit under 28 U.S.C. 1738 in New Hampshire and is prepared to seek such a ruling in the federal district court.

Dated: June 2, 2006


Madelyn Miller

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Submission has been sent this 2nd day of June, 2006 by e-mail to Thomas W. Kober.

Dated: June 2, 2006


Madelyn Miller

LIST OF EXHIBITS

- EXHIBIT 1** **Claimant's Check for Filing Fee to the Appellate Division**
- EXHIBIT 2** **Appellate Division Clerk's Letter to Claimant**
- EXHIBIT 3** **Copy of Envelope for Appellate Division Clerk's Letter to Claimant**
- EXHIBIT 4** **UPS Tracer Copy**
- EXHIBIT 5** **Claimant's Letter to Appellate Division Clerk**

EXHIBIT 1

CHRISTOPHER CURIA 136

July 1, 1994 L-100-251

Appellate Division, Second Department E.S.P. 12

Five hundred fifty and 00/100

1ST NATIONWIDE BANK

83-1289-93 *Christopher Curia*

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JY 06 1994
PENICAL BANK
 WATER ST.
 N.Y.C., N.Y.

STATE OF N.Y. APPELLATE DIVISION
 CLERK OF COURT 2nd JUDICIAL DIST.
 6-03 GREEN ST. NEW YORK, N.Y. 10014
 7/05/94 002 8-001 101014

EXHIBIT 2

(718) 875-1300



MARTIN H. BROWNSTEIN
CLERK OF THE COURT

ARNOLD EDMAN
MEL E. HARRIS
DEPUTY CLERKS

Appellate Division
Supreme Court of the State of New York
Second Judicial Department
45 Monroe Place
Brooklyn, N. Y. 11201

July 6, 1994

Madelyn Miller
201 Varick Street
Box 436
New York, N. Y. 10014

Re: Miller v Kelner
Case Nos. 93-08289, 94-04268

Dear Ms. Miller:

On Tuesday morning, July 5, 1994, a gentleman came to the court to file an appendix and brief with respect to the above appeal. The clerks initially refused to accept the filing on the ground that the last date to perfect, pursuant to this court's order, was July 1, 1994. The gentleman who appeared maintained that he had arrived at the court at about 5:00 p.m. on July 1, 1994, that no clerks were available, and that the building guard signed a note verifying that he was here.

The guard in question was not in the courthouse on July 5, 1994 and was unable to verify the above representation. The appendix and brief were accepted for filing subject to verification. When the guard appeared for work today, he informed me that the gentleman arrived between 5:45 p.m. and 6:00 p.m. on July 1, 1994 and that the note he gave him bore a time stamp. It is curious that the paper presented by the person who filed did not have a time stamp and was a photocopy.

Accordingly, the appendix and brief are rejected and this matter is not properly perfected. Please make arrangements for someone to come to the court and pick up the copies of the appendix and brief.

Yours truly,

MARTIN H. BROWNSTEIN
Clerk

MHB/ld

CERTIFIED MAIL and REGULAR MAIL

cc: L'Abbate & Balkan, Esqs.
1050 Franklin Avenue
Garden City, N. Y. 11530

EXHIBIT 3

APPELLATE DIVISION, SUPREME COURT
SECOND JUDICIAL DEPARTMENT
STATE OF NEW YORK
48 MONROE PLACE
BROOKLYN, N.Y. 11201

Postage and charges of any kind to the right
of the return address.

CERTIFIED

F 274 155 412

MAIL

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Winkowski
BROOKLYN, NY 11258 07/14/94 23 2 178#3

Madelyn Miller
201 Varick St.
Brooklyn, NY 10014

Postage and charges of any kind to the right
of the return address.
Cert. No. 10014

Handwritten signature

Handwritten notes:
4
TNS
4/12

EXHIBIT 4

UPS INTERNAL

TRACER COPY

| | | | |
|------------------------------|-----------------|-------------------|--------------------------|
| PURCHASE ORDER NO | SHIPPER INVOICE | SHIPPER REFERENCE | SHIPPER TELEPHONE NUMBER |
| SHIPMENT SENT TO (CONSIGNEE) | | INQUIRY FROM | |
| M MILLER | | M MILLER | |

ADDITIONAL INFORMATION MAY BE AVAILABLE PRESS F4 TO SEARCH
 * ENTER: DETAIL F2: SIGNATURE F3: SIGNOFF F5: SELECT F6: UNSELECT *
 * F7: PREV PAGE F8: NEXT PAGE F9: ROUTING F10: BYPASS SHIP VALIDATION *

07-13 SA MW KS IM II S1 CS1C21 KB

HDD3201

PKG: 001 OF 001

DEL DATE: 08 29 94

SHIP NO: 1E8336

TRACKING NUMBER(S):

DIALS ON-LINE INQUIRY
 DETAIL SCREEN

PKG ID: 21 DEL STAT: NOT DELIVERED
 CLARIFIED SIGNATURE:

FEB 1995
 08:28:49 ET

ORIGINAL RECEIVER :
 ADDRESS: 201 VANICK ST STE G, NEW YORK, NY 10014

REMARKS: PACKAGE REFUSED DTDOT MAIL

COD DUE AMT : \$ 0.00
 COD CASH RECV: \$ 0.00

TAX DUE AMT : \$ 0.00
 TAX CASH RECV: \$ 0.00

CHECK(S) RECEIVED:

* F2: SIGNATURE F7: PREV CANDIDATE F8: NEXT CANDIDATE *
 * F9: ROUTING F10: RETURN TO CANDIDATE LIST *

EXHIBIT 5

201 Varick Street
Box 436
New York, N.Y.
10014

March 30, 1995

Martin Brownstein
Clerk of the Court
Appellate Division
Supreme Court of the
State of New York
Second Judicial Department
45 Monroe Place
Brooklyn, N.Y. 11201

Re: Case Numbers
93-08289
94-04268

Dear Mr. Brownstein,

In response to your note dated March 22, 1995, I have no doubt that your previous letters of July 6 and August 25, 1994 were properly addressed to me at 201 Varick Street, Box 436, New York, N.Y. 10014 as the copies of those letters indicate. I believe that the mailing problem arose because the box number was omitted from my address on the envelopes that contained those letters, although the letters themselves were properly addressed. An examination of the copy that you provided of the envelope that contained the July 6, 1994 certified mailing seems to indicate that that was the problem and the reason why I never received that letter. I assume that the non-certified mailing of that same date and the August 25, 1994 mailing also omitted the box number on their respective envelopes, explaining why I did not receive those letters either. Also, a recent envelope containing material that I had requested from your office a few weeks ago and picked up in person at the clerk's office, was typed with my address, but omitted the box number.

Indeed, the only mailing that I ever received from you was the March 22, 1995 letter, which had my box number on its envelope. Without the box number, your previous letters were/would have been undeliverable. In the course of a year, I receive quite a lot of mail at 201 Varick Street, Box 436, and have successfully done so for many years. I have found the mail service usually reliable and satisfactory, and am confident that I would have received your mailings had they been properly addressed.

As you are the head clerk, I would also like you to know that I telephoned the clerks' office at least once a week in late July and throughout August, 1994, asking one of the clerks there to read to me what was in the computer on the above-referenced matters, as I was puzzled at the lack of respondents' brief. I was told of the July 5, 1994 filing of appellant's brief and of the filing of original papers from the State Supreme Court in Mineola in late July, 1994. Nothing was ever said to me about the July 6, 1994 rejection of my papers. I don't know when that information was put into the Court computer, or if it was on another screen that the clerks did not access or know (how) to access, but I did not get that information when I called. Because one of the clerks mentioned that a respondent's brief is not mandatory, I assumed that in the above-referenced matters, respondents chose not to file one for whatever reasons they had.

My papers that you threw out as garbage were essentially an essay about your Court and its powers of modification and were worthy of a better fate. Had I received or been given any information pertaining to the rejection of those papers, I would have acted upon it immediately.

Very truly yours,

Madelyn Miller

Madelyn Miller