

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

**BEFORE THE COURT-APPOINTED REFEREE
IN RE THE 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

REFEREE RULING

This matter comes before the Referee as a disputed claim proceeding submitted for resolution under Sec.15 of the Procedures. The Claimant, Madelyn Miller, disputes the Liquidator's determination of her third party proof of claim seeking an allowance in relation to a professional liability claim against a Home insured, Kelner & Kelner.

The history in this matter is a lengthy one and begins with a most unfortunate incident, an assault on the Claimant in a dormitory of the State University of New York at Stonybrook in 1975. On her behalf and as a result of the incident, Kelner & Kelner filed a civil action seeking compensation for her injuries with the New York Court of Claims. On February 8, 1982, after a hearing on the merits, Ms. Miller was awarded \$25,000 in compensation for those injuries. Upon appeal the initial award was enhanced by \$375,000. Ms. Miller's claim here relates to her assertion that her attorneys failed her by obtaining interest on the \$400,000 award only from June 21, 1985, and not from the date of the initial award. Ms. Miller estimates that the insured's failure to properly pursue judgment interest on her behalf diminished the dollar value of her recovery by somewhere between \$90,000 -\$100,000. She requests an allowance in that range.

This disputed claim file is replete with copies of prior orders and rulings from various New York State court proceedings. Between 1992, when suit against the insured was instituted, and November 30, 2000, Ms. Miller unsuccessfully pursued legal redress through the court system in New York, and beyond. Other than the early rulings which provided monetary compensation for the 1975 assault, rulings and orders have been quite consistently adverse to Ms. Miller's related claims.

The Referee focuses principally upon the professional liability suit Ms. Miller brought against Kelner & Kelner in 1992. In that action Ms Miller alleged that Kelner & Kelner were professionally negligent in the handling of the court of claims action brought on her behalf. As matters were played out, the New York Supreme Court dismissed her five-count professional liability suit, finding that four counts failed to state a cause of action, and that the fifth was barred by the statute of limitations. Further, on June 4, 1994, the

and that the fifth was barred by the statute of limitations. Further, on June 4, 1994, the Supreme Court denied a later motion for re-argument. The Appellate Division of the Supreme Court dismissed her appeal in October of 1984, and denied her ensuing motion to vacate that dismissal. And, her appeal to the New York Court of Appeals was rejected in 1996, along with a subsequent motion to file an appeal in that court. Finally, of additional note and again to no avail, Ms. Miller pursued other avenues of redress, including an Article 78 proceeding in New York to compel restoration of the previously dismissed appeals, and a writ of certiorari to the United States Supreme Court.

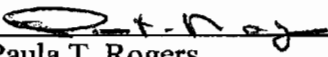
In reviewing this matter, the Referee has paid particular attention to the Claimant's most recent submission which focuses upon the October 12, 1994 dismissal of her appeal to the Appellate Division of the New York Supreme Court for "failure to perfect." In that submission, Ms. Miller provides her perspective on the circumstances of that dismissal, and argues that because of it she has been deprived of a full and fair opportunity to litigate her professional liability claim in New York.

While Ms. Miller may perceive the 1994 dismissal of her appeal to have been unfair, she did have a legal opportunity to raise concerns with it. And, despite her filing of a motion to vacate the 1994 order of dismissal, on September 19, 1995, upon "the papers filed in support of the motion and the papers filed in opposition thereto", the Appellate Division denied her motion to vacate. Practically speaking, Ms. Miller's opportunity to further pursue the malpractice suit was eliminated by that procedural dismissal. Thus the 1993 ruling of the Supreme Court which disposed of Ms. Miller's professional liability claims remains undisturbed by any of the subsequent legal actions brought by Ms. Miller.

Therefore, the Referee AFFIRMS the Liquidator's determination in this matter.

So ruled:

Dated: June 28, '06



Paula T. Rogers
Referee