

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

----- X

Index No.: 100270/08

In the Matter of the Claim of JUNE MANTON against  
The Atlantic Mutual Insurance Company Pursuant to  
Policy Number 266-05017-38H

**DECISION**

----- X

By motion dated January 3, 2008, returnable January 15<sup>th</sup> 2008, Petitioner, June Manton, moved for the appointment of an umpire pursuant to the provisions relating to appraisals contained in the standard fire insurance policy of the State of New York (Insurance Law § 3408). The application was granted on default and by Order on April 30, 2008, Justice Herman Cahn, a Justice of the Supreme Court of the State of New York appointed the Hon. Israel Rubin as the competent, impartial umpire for the purpose of the appraisal between the parties. Justice Cahn ordered that the umpire shall determine:

- a. The amount of petitioner's loss to improvements and betterments to her residential apartment; and
- b. The duration of the period of restoration as defined in the policy of insurance in order to determine the allowance for additional living expenses as provided in the policy.

This proceeding was instituted to determine damages arising from a fire that occurred on August 20, 2006, on the roof of 167 Spring Street in the Borough of Manhattan, City and State of New York. The fire led to water damage to Petitioner, June Manton's, apartment. The damage was so extensive as to make the apartment uninhabitable. There is no question that Ms. Manton has not had the use of her apartment since the date of the occurrence and has had to reside in an hotel and two other apartments.

The appraisers of both parties have met in an attempt to reconcile their differences but have been unable to agree as to the amount necessary to restore the premises to its original

condition. I have received correspondence from the attorneys for both parties which reflect the major differences between both sides as to the damage done the petitioner to restore the premises and to restore her to possession.

As a result, a hearing took place at my office at 200 Park Avenue, Borough of Manhattan, City and State of New York on August 20, 2008. Prior to the taking of testimony, the parties stipulated that as to item (B) of Justice Cahn's Order that the period of restoration for the apartment is eight months from the date restoration commences. It was further made clear that the stipulation does not affect any other part of the policy which will be determined by the Court or some other forum.

Testifying at the hearing was the claimant June Manton, the general contractor, Michael Fishelson of Home Crest; Trent Darden of Rolyn Disaster Company, a national disaster restoration emergency response company; Carmine "Tom" Rubino of C. J. Rubino & Company, Inc., a firm dealing in building appraisal, construction consulting and construction management.

All the witnesses testified as to the damage to the apartment, the main disagreement being on certain elements of whether repair or replacement was necessary. What all agreed was that there was extensive damage. However, the disagreement being as to pricing and the necessity for certain renovations. Listening to the claimant's witnesses and the witness for Atlantic Mutual was a contrast so great that, at times, I thought we were referring to two different sites. The estimate of the general contractor, Mr. Fishelson was in the sum of \$1,039,994 to do the renovations and bring the apartment to code compliance. Mr. Fishelson's testimony indicated that materials have gone up based on the fact that "a lot of materials are based on oil". He added that "every vendor has now added additional line items and fuel surcharges". I find Mr. Fishelson's testimony to be credible.

On the other hand, Mr. Rubino's testimony, based on his appraisal experience emphasized more than his construction experience leaves many voids in his analysis which includes the use of a Xactinite program for calculation and the availability of putting the premises in code compliance. Based on his calculations of the work necessary which includes a 10% figure for profit would amount to \$301,980.43, a disparity of some \$700,000 between to the estimates.

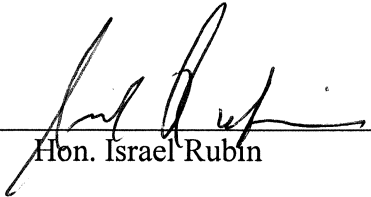
Since the disparity was so great, I accompanied by the claimant and the attorneys, visited the premises on August 27<sup>th</sup>. It is said that a picture is worth a thousand words. No amount of testimony could tell the reality of the destruction of the premises. What I saw was a shell of an apartment. An apartment that was destroyed by the event that had transpired and in need of a complete renovation and rehabilitation. The condition that I witnessed was dangerous and should be immediately repaired and renovated. No amount of testimony could do justice to the true condition of the devastation of the premises.

Taking all the testimony and the inspection of the premises into consideration, I find that the appraiser for Atlantic Mutual, Inc. was extremely low in his estimate. I find that his credibility is in doubt in that the estimate could not possibly take into consideration all of the work and material necessary to renovate the premises and bring it into code compliance.

As previously stated I find the appraisal of the claimant to be credible and of greater value to restore the premises in compliance with the appropriate codes. However, I must take into consideration the economy of the present day and the great reduction in the price of oil. While I am unable to go through every item that requires an oil base, I can take into consideration transportation costs that are now below the level of the prices in August when the hearing took place. I therefore, am deducting approximately two percent from the overall

appraisal submitted and testified to during the hearing. I therefore, find the amount necessary to rebuild the premises and restore it to code compliance to be in the amount of \$1,019,195.

Dated: New York, New York  
December 23, 2008



---

Hon. Israel Rubin