

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

**In Re Liquidator Number: 2007-HICIL-33
Proof of Claim Number: INSU703263
Claimant Name: GREGORY LEVY, as
Administrator of the Estate of
HAROLD LEVY**

**THE LIQUIDATOR'S FURTHER BRIEF IN
SUPPORT OF HIS MOTION TO DISMISS**

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, acting solely in his capacity as Liquidator (the "Liquidator") of The Home Insurance Company ("Home"), by and through counsel, hereby submits this Brief in support of his contention that this disputed "Small Claim" is ripe for Referee adjudication and should be dismissed.

Claimant, GREGORY LEVY, as purported Administrator of the Estate of HAROLD LEVY ("Claimant"), submitted a Proof of Claim ("POC") to the Liquidator dated June 8, 2004, asserting entitlement to \$18,784.90. (*Case file tab D, POC Question 5.*) Claimant's POC attempts to revive causes of action asserted by Claimant's decedent, Harold Levy, in his Summons and Verified Complaint served and filed in the Supreme Court of the State of New York, County of Erie (*Case file tab H.*) That court dismissed Harold Levy's complaint "on the merits" pursuant to the Order of Hon. John A. Michalek, J.S.C., Buffalo, NY, dated September 21, 2006. (*Case file tab F.*)

The Referee convened a telephonic pre-hearing conference on April 25, 2008. Prior thereto, the Referee gave the parties the opportunity to file pre-hearing briefs. The Liquidator accepted the opportunity and filed his pre-hearing brief (incorporated herein

by reference) on April 15, 2008, wherein he outlined the underlying facts of Claimant's position and the legal and factual justification for disallowing the POC.

During the course of the pre-hearing conference, Claimant advised the Referee that he believed he had documentation that would support his claim that he was the proper party-in-interest authorized to pursue this claim on behalf of the Harold Levy estate. In response, the Referee directed Claimant to provide his proof of authority within ten days. As the Liquidator emphasized, even if Claimant established such authority, Claimant would still have to vacate the underlying dismissal of his claim before proceeding in the liquidation proceeding.

The "documentation" proffered by Claimant and the Liquidator's response thereto were outlined in the Liquidator's Further Statement (incorporated herein by reference) filed with the Liquidation Clerk on May 6, 2008.

In response to the Liquidator's Further Statement, Claimant requested an extension of time to prove that he was the administrator of his father's estate. (Exhibit 1.) Liquidator's counsel forwarded the extension request, with a notation of non-objection, to the Liquidation Clerk on May 12, 2008. (Exhibit 2.) In response thereto, the Liquidation Clerk, by e-mail dated May 14, 2008, queried Mr. Levy, on behalf of the Referee, regarding both the rationale for his requested extension and the amount of time requested. (Exhibit 3.) The Liquidator similarly e-mailed Claimant in an effort to ascertain if he intended to respond directly to the Liquidation Clerk or if he preferred to speak with Liquidator's counsel beforehand. (Exhibit 4.) Claimant never responded to the Liquidator. Nor has Claimant responded to the Liquidation Clerk.


Despite having been afforded ample opportunity to do so, Claimant has provided no proof to support an assertion that a viable cause of action remains open to him to revisit the prior court ruling that resolved his claim. No evidence has been presented to establish that a timely appeal of the dismissal was either perfected or even attempted by Claimant. Furthermore, the evidence presented to date confirms that the steps necessary to appoint an administrator for the estate of Harold Levy or substitute a proper representative in the underlying lawsuit were never accomplished.

Similarly, Claimant has had more than enough time to supplement his disputed claim filing. Having failed to do so, the Liquidator respectfully avers that the time is now ripe for the Referee to issue a ruling dismissing Claimant's instant Objection. As such, the Liquidator respectfully requests that the Referee: (1) dismiss Claimant's Objection to the Liquidator's Notice of Determination; (2) rule that the Liquidator's recommended Determination, as set forth in the Notice of Determination, be allowed as stated; and (3) grant such other and further relief as is deemed appropriate in the circumstances.

Respectfully submitted,

**ROGER A. SEVIGNY, INSURANCE
COMMISSIONER of the STATE OF NEW
HAMPSHIRE, as LIQUIDATOR OF
THE HOME INSURANCE COMPANY,**

By his attorneys,




**Jonathan Rosen, Esq. (N.H. Bar # 16951)
Thomas W. Kober, Esq. (admitted *pro hac vice*)
The Home Insurance Company in Liquidation
59 Maiden Lane
New York, New York 10038
(212) 530-4001**

June 30, 2008

CERTIFICATE OF SERVICE

I hereby certify that a copy of this "Liquidator's Further Brief" has been forwarded via First Class mail and e-mail this 30th day of June, 2008 to Claimant at the address below.



Thomas W. Kober


Mr. Gregory Levy
Representative of the Estate of Harold Levy
266 Dorrance Avenue
Buffalo, New York 14220

levycg@aol.com



levycg@aol.com
05/12/2008 11:39 AM

To tom.kober@homeinsco.com
cc
bcc
Subject (no subject)

History:  This message has been replied to.

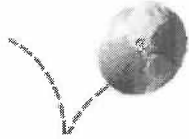
dear Mr KOBER,

I am asking for a extension on my case.

I know I have the proper paper work proving that I Gregory levy am the administrator of the estate or Harold levy.

PLEASE CAN YOU HELP ME? I REALY NEED TO GET THIS ROOF FIXED.

Wondering what's for Dinner Tonight? [Get new twists on family favorites at AOL Food.](#)



Tom Kober/New
York/HomeIns
05/12/2008 12:07 PM

To levycg@aol.com
help@hicialclerk.org, Ron Barta/New
cc York/HomeIns@HomeInsco, Jonathan Rosen/New
York/HomeIns@HomeInsco
bcc Tom Kober/New York/HomeIns
Subject 2007-HICIL-33 (Levy) [1]

Dear Mr. Levy,

I do not have the authority to grant an extension regarding your case. However, I will forward your e-mail and my reply to the Liquidation Clerk for transmittal to Referee Rogers noting that, on behalf of the Liquidator, I will agree to a reasonable extension should Referee Rogers deem it appropriate.

Please be advised that the Liquidator reserves all his rights regarding this matter including his position that the disallowance was proper given the court adjudicated, final dismissal of the previously instituted New York proceedings.

Regards,

Tom Kober

Thomas W. Kober, Esq.
Chief Claims Officer
The Home Insurance Company in Liquidation
59 Maiden Lane
New York, New York 10038
212-530-4001
212-299-3824 (fax)
tom.kober@homeinsco.com

levycg@aol.com



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"Help" <help@hicilclerk.org>

05/14/2008 08:28 AM

To <tom.kober@homeinsco.com>, <levycg@aol.com>

cc <ron.barta@homeinsco.com>,
<jonathan.rosen@homeinsco.com>

bcc

Subject RE: 2007-HICIL-33 (Levy)

History:

➡ This message has been forwarded.

Mr. Levy and Attorney Kober

I have spoken with the Referee regarding Mr. Levy's interest in an extension of time. While she is likely to provide an extension of time, she would also like an indication as to why it is requested and for how long. Is Mr. Levy intending to request that the dismissal of the underlying action in the New York Supreme Court be set aside?

Renee A. Dubuque

Liquidation Clerk

-----Original Message-----

From: tom.kober@homeinsco.com [mailto:tom.kober@homeinsco.com]

Sent: Monday, May 12, 2008 12:07 PM

To: levycg@aol.com

Cc: help@hicilclerk.org; ron.barta@homeinsco.com; jonathan.rosen@homeinsco.com

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08 11:39
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(no subject)

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Tom Kober/New
York/HomeIns
05/14/2008 04:41 PM

To <levycg@aol.com>
cc Ron Barta/New York/HomeIns@HomeInsco, Jonathan
Rosen/New York/HomeIns@HomeInsco, help@hiciclerk.org
bcc Tom Kober/New York/HomeIns
Subject Fw: 2007-HICIL-33 (Levy)

Dear Mr. Levy,

Kindly advise if you intend to directly reply to the Liquidation Clerk. If you would like to discuss the matter beforehand, kindly advise either Mr. Barta or myself of a date and time when we can call you and please provide the telephone number whereby we can contact you. Thank you.

Regards,

Tom Kober

Thomas W. Kober, Esq.
Chief Claims Officer
The Home Insurance Company in Liquidation
59 Maiden Lane
New York, New York 10038
212-530-4001
212-299-3824 (fax)
tom.kober@homeinsco.com

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