

**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 STATEMENT REGARDING CLAIMANT'S
TENDERED PROOF OF AUTHORITY TO ACT AS REPRESENTATIVE OF
THE ESTATE OF HAROLD LEVY**

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 further statement in response to the documentation submitted by Claimant, Gregory Levy, which purports to grant him authority to proceed on behalf of the Estate of Harold Levy.

Claimant, GREGORY LEVY, claiming herein as Administrator of the Estate of HAROLD LEVY ("Claimant"), advised Referee Paula Rogers, during the course of the April 25, 2008 telephonic prehearing conference, that he believed he had documentation that confirmed his appointment as representative of the estate of Harold Levy. Referee Rogers directed Claimant to file his documentation with the Liquidation Clerk and Liquidator's counsel within ten (10) days of the conference. In response to said Order, Claimant has served a "Durable General Power of Attorney," (*Power of Attorney*) dated August 16, 2000, whereby principal, Harold Levy, appointed both Gregory Levy and Lisa Brown as his attorneys-in-fact regarding various delineated matters. (*Exhibit A.*)

Also in response to the Referee's directive, Claimant has filed and served a copy of an "Affidavit in Relation to Settlement of Estate Under Article 13 SCPA," (*"Small Estate Affidavit"*) dated February 4, 2004 and attested to by both Gregory Levy and Lisa Brown. (*Exhibit B.*)

In response to Claimant's submitted proof of authority to act as representative of the estate of Harold Levy (*"Decedent"*), the Liquidator makes the following points.

1. The submitted Power of Attorney is inapplicable insofar as estate proceedings are concerned. Indeed, the highlighted introductory paragraph emphasizes that it "GIVES THE PERSON WHOM YOU DESIGNATE. . . POWERS. . . **DURING YOUR LIFETIME.** . . ." (*Emphasis added.*)
2. Additionally, the referenced Power of Attorney requires that "All agents must act TOGETHER," (*i.e., both Mr. Levy and Ms. Brown were required to act in concert regarding the Power of Attorney.*)
3. The tendered Small Estate Affidavit is, similarly, insufficient for its proffered purpose. SCPA refers to New York's "Surrogate's Court Procedure Act." Article 13 thereof relates to the "Settlement of Small Estates Without Court Administration" and defines a "small estate" as the "estate of a [decedent] who dies leaving personal property having a gross value of \$20,000 or less. . . ." (*NY SCPA §1301.1*)
 - a. Both Gregory Levy and Lisa Brown executed the Small Estate Affidavit. While an affidavit alone, without a corresponding order or short form certificate acknowledging court acceptance of the affidavit, would generally be insufficient to evidence court approval of same, the Liquidator is prepared to accept, for the purposes of this proceeding, that the Surrogate's Court of

Erie County, New York, accepted and approved of Claimant's and Ms. Brown's request to serve as voluntary administrators of Harold Levy's estate.

- b. While Claimant and Ms. Brown averred that "[t]he value of the entire personal property, [of Harold Levy's estate] does not exceed twenty thousand dollars (\$20,000)," (*Exhibit B*, ¶2) the cause of action which forms the basis of Claimant's Proof of Claim ("POC") was not listed, as required, in answer to the question seeking specification of "all personal property owned by the decedent." (*Exhibit B*, ¶4.)
 - c. Had this cause of action been included the value of the estate would have exceeded the statutory maximum estate value, rendering the small estate administration application invalid, as Decedent asserted in his verified complaint a claim "in the sum of FIFTY THOUSAND (\$50,000.00) DOLLARS." (*Case File Exhibit H*.)
 - d. In consideration of the foregoing, Claimant has failed to prove that he is the proper party in interest in the underlying lawsuit giving rise to Claimant's POC.
4. Even if the Referee accepted that Claimant properly documented his right to represent decedent's estate, the Liquidator correctly recommended disallowance of Claimant's POC.
- a. Claimant has presented no evidence to support his conclusory assertion that he was properly substituted as Administrator of Decedent's estate in the underlying proceedings. As articulated in the Liquidator's Pre-Hearing Brief, counsel for the estate affirmatively stated that there was never any intention

for Claimant to be substituted as Administrator of the underlying estate. (*Case File Exhibit G, Affidavit ¶11.*)

- b. The New York court's dismissal, with prejudice, and without having been appealed, fully and finally resolved this matter. (*Case File, Exhibit F.*)
- c. As elaborated upon in the Liquidator's Pre-Hearing Brief, before Claimant can upset the Liquidator's disallowance of his POC he would have to prove that the dismissal referenced above has been vacated and since it has not, he cannot prevail in this action.

CONCLUSION

For the reasons set forth herein, 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**

May 6, 2008

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Further Statement has been forwarded via First Class mail and e-mail this 6th day of May, 2008 to Claimant at the addresses below.



Thomas W. Kober

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

Levygc@aol.com

DURABLE GENERAL POWER OF ATTORNEY

NEW YORK STATUTORY SHORT FORM
THE POWERS YOU GRANT BELOW CONTINUE TO BE EFFECTIVE
SHOULD YOU BECOME DISABLED OR INCOMPETENT

(CAUTION: THIS IS AN IMPORTANT DOCUMENT. IT GIVES THE PERSON WHOM YOU DESIGNATE (YOUR "AGENT" BROAD POWERS TO HANDLE YOUR PROPERTY DURING YOUR LIFETIME, WHICH MAY INCLUDE POWERS TO MORTGAGE...

THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL OR OTHER HEALTH CARE DECISIONS FOR YOU. YOU MAY EXECUTE A HEALTH CARE PROXY TO DO THIS.

IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.)

THIS is intended to constitute a DURABLE GENERAL POWER OF ATTORNEY pursuant to Article 5, Title 15, of the New York General Obligations Law:

I, HAROLD LEVY, residing at 266 DORRANCE AVENUE, BUFFALO, NEW YORK 14220, do hereby appoint GREGORY LEVY, residing at 266 DORRANCE AVENUE, BUFFALO, NEW YORK 14220, and LISA BROWN, residing at 229 GEORGIA STREET, MOUNTAIN CITY, TENNESSEE 37683, my attorney(s)-in-fact TO ACT

(If more than one agent is designated, CHOOSE ONE of the following two choices by putting your initials in ONE of the blank spaces to the left of your choice:)

() Each Agent may SEPARATELY act.

[initials] All agents must act TOGETHER.

(If neither blank space is initialed the Agents will be required to act TOGETHER.)

IN MY NAME AND PLACE AND STEAD in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in Title 15 of Article 5 of the New York General Obligations Law to the extent that I am permitted by law to act through an agent:

(DIRECTIONS: Initial in the blank space to the left of your choice any one or more of the following lettered subdivisions as to which you WANT to give your agent authority. If the blank space to the left of any particular lettered subdivision is NOT initialed, NO AUTHORITY WILL BE GRANTED for matters that are included in that subdivision. Alternatively, the letter corresponding to each power you wish to grant may be written or typed on the blank line in subdivision "(Q)", and you may then put your initials in the blank space to the left of subdivision "(Q)" in order to grant each of the powers so indicated)

[Handwritten initials in a vertical column next to options A through M]

- (A) real estate transactions;
(B) chattel and goods transactions;
(C) bond, share and commodity transactions;
(D) banking transactions;
(E) business operating transactions;
(F) insurance transactions;
(G) estate transactions;
(H) claims and litigation;
(I) personal relationships and affairs;
(J) benefits from military service;
(K) records, reports and statements;
(L) retirement benefit transactions;
(M) making gifts to my spouse, children and more remote descendants, and parents, not to exceed in the aggregate \$10,000 to each of such persons in any year;

[Handwritten initials next to options N through P]

- (N) tax matters;
(O) all other matters;
(P) full and unqualified authority to my attorney(s)-in-fact to delegate any or all of the foregoing powers to any person or persons whom my attorney(s)-in-fact shall select;

()

(Q) each of the above matters identified by the following letters:

Special provisions and limitations may be included in the statutory short form durable power of attorney only if they conform to the requirements of section 5-1503 of the New York General Obligations Law.)

[Handwritten initials]

(R) I SPECIFICALLY AUTHORIZE MY ATTORNEY-IN-FACT TO EXECUTE ALL DOCUMENTS NECESSARY TO TRANSFER ANY AND ALL OWNERSHIP INTERESTS I MAY POSSESS IN REAL PROPERTY COMMONLY KNOWN AS 266 DORRANCE AVENUE, BUFFALO, NEW YORK 14220

This durable Power of Attorney shall not be affected by my subsequent disability or incompetence.

TO INDUCE ANY THIRD PARTY TO ACT HEREUNDER, I HEREBY AGREE THAT ANY THIRD PARTY RECEIVING A DUL
EXECUTED COPY OR FACSIMILE OF THIS INSTRUMENT MAY ACT HEREUNDER, AND THAT REVOCATION O
TERMINATION HEREOF SHALL BE INEFFECTIVE AS TO SUCH THIRD PARTY UNLESS AND UNTIL ACTUAL NOTICE O
KNOWLEDGE OF SUCH REVOCATION OR TERMINATION SHALL HAVE BEEN RECEIVED BY SUCH THIRD PARTY, AND
FOR MYSELF AND FOR MY HEIRS, EXECUTORS, LEGAL REPRESENTATIVES AND ASSIGNS, HEREBY AGREE T
INDEMNIFY AND HOLD HARMLESS ANY SUCH THIRD PARTY FROM AND AGAINST ANY AND ALL CLAIMS THAT MA
ARISE AGAINST SUCH THIRD PARTY BY REASON OF SUCH THIRD PARTY HAVING RELIED ON THE PROVISIONS OF THI
INSTRUMENT.

THIS DURABLE GENERAL POWER OF ATTORNEY MAY BE REVOKED BY ME AT ANY TIME.

In Witness Whereof I have hereunto signed my name this 16 day of August, 2000.

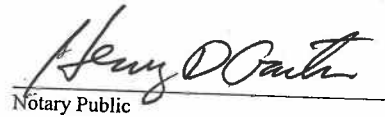
(YOU SIGN HERE)



(Signature of Principal)

STATE OF NEW YORK)
COUNTY OF ERIE)

On the _____ day of AUGUST in the year 2000 before me, the undersigned, a notary public in and for said state,
personally appeared HAROLD LEVY, personally known to me or proved to me on the basis of satisfactory evidence to be
the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his
capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted,
executed the instrument.


Notary Public

HENRY D. GARTNER
NOTARY PUBLIC, STATE OF NEW YORK
QUALIFIED IN ERIE COUNTY
My Commission Expires June 4, 20 02

RECEIVED
MAY 5 2008
MAILROOM

Surrogate's Court ERIE COUNTY, NEW YORK

JOSEPH S. MATTINA, SURROGATE

IN THE MATTER OF THE ESTATE OF

Harold Levy

Fee 1.00
4 shif

FILE NO. 2004-502

Affidavit in Relation to Settlement of Estate
Under Article 13 SCPA
(Voluntary Administration)

LATE OF THE City OF Bflo DECEASED.

INSTRUCTIONS: In completing this form, answer each question. This may be done in some instances by crossing out the words in parentheses and in other instances by inserting the required information.

STATE OF N.Y.
COUNTY OF Erie } ss.
We Lisa Brown and Gregory Levy

#2004
#502
ADMIN \$1.00
C-VA 40 0.00
State of \$0.00
***TOTAL \$1.00
CASH, deceased \$1.00
CHANGE \$0.00

New York, being duly sworn, depose and say: We are the Co-Executors of Harold Levy domiciled at Bflo

and make this affidavit pursuant to Article 13 of the SCPA.
1. Deceased died intestate (i.e., without leaving a will), or testate, on 1/30/04 domiciled in the County of Erie and State of New York

2. The value of the entire personal property, wherever located, of the decedent hereinafter listed, exclusive of trust accounts, jointly owned personal property, and of property required to be set off under EPTL 5-3.1 does not exceed twenty thousand dollars (\$20,000)

3. The names and addresses of the decedent's intestate distributees under EPTL 4-1 including non-marital children and descendants of predeceased non-marital children as well as the names and addresses of all beneficiaries, executors and trustees named in decedent's will and their relationship to the decedent are as follows:

Name	Age	Relationship	Address
Gregory Levy	Full Son		266 Dorance Ave, Bflo, NY 14220
Lisa Brown	Full Daughter		229 Georgia St, Mountain City, Tenn 37683

(If more space is needed, add a sheet of paper.)

**List Other Names used by the decedent (Re: Alias, maiden name, prior marriage names):

ESTATE INDEX SEARCHED
Date: _____ By: _____
Estate Number _____
If Previously Indexed: _____

SAFEKEEPING FILE SEARCHED
Date: _____ By: _____

FILED
FEB 4 2005
PH 4:08
MOUNTAIN CITY, TENN

4. The following, exclusive of trust accounts and jointly owned personal property, is a complete list of all personal property owned by the decedent, in his/her own name or owned by him/her beneficially:

ITEMS OF PERSONAL PROPERTY
SEPARATELY LISTED

VALUE OF
EACH ITEM

- | ITEMS OF PERSONAL PROPERTY SEPARATELY LISTED | VALUE OF EACH ITEM |
|--|--------------------|
| ① HSBC checking | amt \$240.96 |
| ② To clear for bank accounts | |
| ③ 1994 Buick Roadmaster | amt \$6600.00 |
| ④ Household Finance - to assign loan | 0.00 |

5. All the liabilities (names of creditors and amounts) of the decedent known to me are as follows:

Schwager F.H. amt 3551.00

(If more space in needed, add a sheet of paper)

6. I undertake to act as voluntary administrator of the decedent's estate and to administer it pursuant to Article 13 of the SCPA.

In doing so, I agree to reduce all of the decedent's assets to possession; to liquidate such assets to the extent necessary; to open an estate bank account in a bank in this state in which I shall deposit all money received; to sign all checks drawn on or withdrawals from such account in the name of the estate by myself as Voluntary Administrator; to pay the expenses and his debts in the order provided by law; and to distribute the balance to the person or persons and in the amount or amounts provided by law. As Voluntary Administrator, I shall file in this court a statement of all assets collected and of all payments and distributions made and receipts for or cancelled checks evidencing such payments and distributions.

7. I understand that this proceeding is no determination of the estate tax liability, if any, in the event that the decedent had any interest in real property in this state or any jointly-owned or trust property.

8. If letters testamentary or of administration are later granted, I acknowledge that my powers as Voluntary Administrator shall cease and I shall thereupon deliver to the rightful Executor or Administrator a complete statement of my account and all assets and funds of said estate in my possession.

[Signature]
(Affiant to Sign Here)
M.A.S.

[Signature]
Terry D. S.

Subscribed and sworn to before me

this 4th day of Feb., 2004

[Signature] [Signature]

NOTARY PUBLIC