



Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE MARGUERITE A. GRAYS
Justice

IAS PART 4

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BARUCH MEYROV and ANGELA MEYROV,

Plaintiff(s),

Index
No.: 709714/2018

Motion
Dated: August 31, 2021

-against-

EDWARD MEIROV and EDWARD MEIROV
AS THE GUARDIAN FOR THE PERSONAL NEED
AND PROPERTY MANAGEMENT OF
SIMCHA MEIROV,

Defendant(s).

Motion
Cal. No.:

Motion
Seq. No.: 4

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The following papers numbered EF 83-93 read on this motion by defendants for an Order directing a second Referee hearing be conducted.

	PAPERS NUMBERED
Notice of Motion Affid.-Exhibits.....	EF 83-85
Answering Affid.-Exhibits.....	EF 86-91
Reply Affid.-Exhibits.....	EF 92-93

Upon the foregoing papers it is ordered that this motion by defendants is determined as follows:

Plaintiffs (husband and wife) commenced the instant action on June 25, 2018, for partition of premises located at 112-07 75th Avenue, Unit 12, Forest Hills, New York 11375 (“subject premises”). Plaintiff, Baruch Meyrov and defendants, Edward Meirov and Simcha Meirov, all siblings, became owners of the subject premises as joint tenants with rights of survivorship upon the death of their father in December 2017. By Order of Reference to Appoint Referee dated October 5, 2020, Nicole Katsorhis, Esq., was appointed Referee in this partition action to, *inter alia*, conduct an accounting and to ascertain the rights, shares and

interest of the parties in the subject premises. It is undisputed that a three-day hearing was conducted by the Referee on May 19, 2021, May 20, 2021, and June 4, 2021. Plaintiffs and defendants appeared at the hearing with their respective attorneys.

Defendants contend that “it was the understanding of Defendants at the time” of the time of the hearing that plaintiffs had collected rent from the tenants at the subject premises from the time of their father’s death in December 2017 up to the time the two tenants began tendering rent checks to all three brothers in April 2018 and July 2018, respectively. Defendants further contend that after the hearing, plaintiffs “disclaimed any such understanding”. Defendants move herein for an order remitting this matter back to the assigned Referee for a second hearing on the issue of the amount of rent collected by plaintiffs from December 2017, upon the ground that said issue was not determined by the Referee at the hearing.

Defendants state that the Referee indicated that she would not conduct a second hearing.

In opposition to defendants’ motion, plaintiffs argue that the Referee already denied defendants’ post-hearing request to consider evidence not presented at the hearing since all parties had a full and fair opportunity to present documentary and testimonial evidence. Plaintiffs argue that the fact that defendants failed to present evidence concerning the amount of any rent plaintiff collected after their father’s death in December 2017 does not warrant defendants “to have a second bite of the apple” where defendants’ had the opportunity to present evidence and question plaintiff Meyrov on this issue at the hearing.

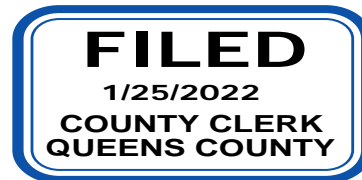
It is well settled that where questions of fact are submitted to a Referee, it is the function of the Referee to determine the issues presented, and to resolve conflicting testimony and matters of credibility, and generally, courts will not disturb the findings of a Referee to the extent that the record substantiates the findings, and they may reject findings not supported by the record (*In re Estate of Matsis*, 274 AD2d 431 [2000]; *Slater v Links at North Hills*, 262 AD2d 299 [1999]; *Mondello v Mondello*, 253 AD2d 861 [1998]).

Upon review of the papers submitted in support of and opposition to the instant motion, the Court finds nothing in the record before it that demonstrates that the Referee did not carry out the duty she was charged with under the October 5, 2020 Order. Here, although the Referee has not yet rendered her report, defendants are still not entitled to a new hearing inasmuch as defendants had a full and fair opportunity to present evidence and be heard on the issue of any rent payments collected by plaintiffs during the 3-day hearing previously conducted by the Referee (*Stein v American Mortgage Banking*, 216 AD2d 458 [1995]). Defendant appeared at the hearing and testified; was represented by counsel who elicited defendant’s testimony and cross-examined plaintiff; and a review of the transcripts of the


hearing demonstrates that the hearing was detailed and thorough (see gen'l *Lennon v 56th and Park (NY) Owner, LLC*, 199 AD3d 64 [2021]). “The due process that is expected for full and fair hearings involves a consideration of various factors. These factors include the nature of the forum ..., the incentive and initiative to litigate, the actual extent of the prior proceeding, [and] the competence and expertise of counsel ...” (*Lennon v 56th and Park (NY) Owner, LLC*, 199 AD3d 64 [2021]). Upon review of the transcripts from the hearing held before Referee Katsorhis, it appears that the hearing was professionally conducted in an adversarial setting, and defendants’ counsel presented as a capable advocate. “[T]here is no reason to conclude that the hearing was conducted in a manner that was anything less than full and fair, without restriction upon either party’s entitlement to present and challenge evidence, and to be heard as to result” (*Lennon v 56th and Park (NY) Owner, LLC*, 199 AD3d 64 [2021]).

Furthermore, in a series of emails exchanged between counsel for each party and Referee Katshorhis after the hearing regarding this issue (Plaintiff’s Exhibit G-H, [NYSCEF Doc. No. 91]), Referee Katsorhis wrote that she will only consider testimony and evidence from the hearing, and she would not schedule a continued hearing in light of the fact that a 3-day hearing had been held.

Accordingly, defendants’ motion is denied.



Dated: 1/19/22



MARGUERITE A. GRAYS
J.S.C.