SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : IAS PART 12

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ZORAIDA REYES,

Plaintiff,

-against-

TENRIT STUDIOS, INC., PARKVIEW SHELTER, ROBERT BEREZIN and ROBERT L. LEWIS,

Defendants.

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Index No. 150071/10

Motion seq. no. 003

DECISION & ORDER

BARBARA JAFFE, JSC:

For plaintiff:
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By notice of motion and submitted on default, plaintiff moves pursuant to CPLR 7510 for an order confirming an award granted in her favor by a judicial hearing officer (JHO) following an inquest and directing the clerk to enter judgment against defendants Tenrit Studios, Inc. and Parkview Shelter (collectively, defendants) for the sum of $1.25 million.

I. BACKGROUND

By decision and order dated February 14, 2013, the judge previously presiding in this part granted plaintiff a default judgment against defendants on liability, finding that she had provided proof of service on defendants and that her affidavit established sufficient proof of her claim, and directing an inquest. (NYSCEF 17).

II. INQUEST

The inquest was held on October 14, 2014. The evidence revealed that plaintiff, a tenant

of defendant Parkview Shelter and the sole witness at the inquest, testified that as she walked down the stairs of the subject building, she slipped and fell down the stairs, injuring her back and hip. She also testified that she had undergone previous back surgery, and with this accident, she re-injured her back and underwent another surgery on it. She remains under medical care for her injuries and takes pain medications. After the accident, plaintiff also had her hips replaced, but still experiences pain in her hips and uses a walker. Her ability to function has been impaired to the extent that she cannot walk far, half a block or less, because she gets tired and must sit down. Plaintiff's medical records were given to the JHO, who then recommended the $1.25 million award and directed plaintiff to submit the transcript of the inquest to be so-ordered. He neither issued a written report nor stated the reasons for his recommendation. (NYSCEF 23).

III. ANALYSIS

The determination of a judicial hearing officer with respect to any proceeding at which he or she presides must be reflected in a written decision in which the reasons on which the decisions or findings and recommendations contained in the report are based. (22 NYCRR 122.9). Pursuant to CPLR 4403, applicable here, a judge may confirm or reject, in whole or in part, the report of a referee, or JHO (*GMS Batching, Inc. v TADCO Constr. Corp.*, 120 AD3d 549 [2d Dept 2014]), may make new findings with or without taking additional testimony, and may order a new trial or hearing. The report should be confirmed if the referee's findings are supported by the record (*Barrett v Toroyan*, 45 AD3d 301 [1st Dept 2007]), and the referee has "clearly defined the issues and resolved matters of credibility" (*Nager v Panadis*, 238 AD2d 135 [1st Dept 1997]). The reviewing court may reject findings not supported by the record. (*Kardanis v Velis*, 90 AD2d 727 [1st Dept 1982]).

Here, the JHO neither stated on the record nor wrote the reasons on which he based his recommendation of an award of $1.25 million for plaintiff's injuries. Consequently, there is no basis for confirming or rejecting it, or for allocating the award according to past and/or future pain and suffering, and past and/or future medical expenses.

There was also no medical evidence presented, expert or otherwise, causally connecting the accident to plaintiff's injuries for which she later required back surgery and two hip replacements, which is significant in light of plaintiff's preexisting back condition and prior back surgery. (*See e.g., Madsen v Merola*, 288 AD2d 520 [3d Dept 2001] [where injury is beyond observation of law jury, expert medical testimony required to causally link it to accident]; *Brown v Albany*, 271 AD2d 819 [3d Dept 2000], *lv denied* 95 NY2d 767 [plaintiff's testimony as to personal injuries properly stricken; while he was competent to testify as to past and present physical condition, competent medical testimony needed to causally connect certain injuries to accident]; *Miranda v City of New York*, 256 AD2d 605 [2d Dept 1998], *lv denied* 93 NY2d 806 [1999] [plaintiff failed to produce competent medical proof of causal connection between medical condition and defendant's alleged negligence]).

There is thus an insufficient basis on which to confirm the JHO's recommendation. (*See Munson v Munson*, 243 AD2d 1031 [3d Dept 1997] [remitting matter to JHO as he failed to set forth reasoning, either on record or in written decision, for determination]; *Matter of Charles F.*, 242 AD2d 297 [2d Dept 1997] []). Accordingly, it is hereby

ORDERED, that the Judicial Hearing Officer's report of October 14, 2014 is rejected; it is further

ORDERED, that a new assessment of damages shall be held by the Judicial Hearing

Officer; and it is further

ORDERED, that the assessment be scheduled for the earliest possible date and the clerk shall notify all parties of the date and time of the inquest.

ENTER:

Barbara Jaffe, JSC

DATED: December 11, 2015
New York, New York