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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Resanda WEISHAR, Appellant,

v.

DAN TAIT, et al., Respondents.

WORKERS' COMPENSATION BOARD, Respondent

April 8, 2021

Facts: Claimant was classified with a permanent total disability. Subsequently, the parties agreed to resolve the claim with a Section 32 settlement. The initial agreement that was submitted to the Board for approval was rejected pending clarification. A revised agreement was submitted resulting in a decision filed on July 3, 2018, advising the parties that the agreement would become final on July 14, 2018. Claimant passed away on July 5, 2018. The carrier was not notified until July 16, 2018. Upon receipt of notice of the claimant's demise, carrier filed request to have the settlement approval reversed. The Board issued a decision on July 31, 2018 finding that the decision was nullified because of the death of the claimant. Claimant's wife objected resulting in the rescission of the July 31, 2018 decision and restoring the claim to the calendar. The WCLJ ruled that the claimant's death prior to the 10-day waiting period rendered the settlement a nullity. Claimant's estate appealed. The Board upheld the WCLJ's decision.

Holding: *Affirmed.*

Discussion: Because the claimant died within the 10-day waiting period following the approval of the Section 32 agreement, but the carrier did not receive notice of the claimant's death until after the 10-day period had expired, the Court found that the carrier was unable to make a timely objection to the approval of the settlement. The Court also ruled that the Board could reasonably conclude that the claimant's death rendered the agreement "unfair, unconscionable or improper

as a matter of law. The Court also determined that the Board's decision was consistent with previous decisions in similar circumstances.

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