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Supreme Court, Appellate Division, Third Department, New York

Matter of ALFONSO SMITH, Appellant,
v
NYC HOUSING AUTHORITY, Respondent
and
WORKER'S COMPENSATION BOARD

Decided February 9, 2017

- Facts: The Workers Compensation Board reduced a judge's finding of a 90% Loss of Wage Earning Capacity to 60% and reduced the claimant's attorney fee of \$4,300 to \$3,400.
- Holding: Affirmed in part and remanded in part
- Discussion: The Court confirmed that the Board was free to credit the testimony of the employer's consultant with regard to the medical impairment and the claimant's functional abilities. The Court deferred to the Board's assessment of credibility based upon the substantial evidence. Regarding the fee, the court noted that no fee shall be based solely on the amount of the award and that the court will only disturb a fee awarded if it is found to be arbitrary, capricious, unreasonable or an abuse of discretion. Here the board simply reduced the fee with no discussion as to the services rendered and remanded that issue to the Board for further review.