

**STEWART, GREENBLATT, MANNING & BAEZ**

**ATTORNEYS AT LAW**  
**6800 JERICHO TURNPIKE**

**SUITE 100W**  
**SYOSSET, NY 11791**

**516-433-6677**  
**FAX 516-433-4342**

**KAFI WILFORD (2003-2010)**  
**MICHAEL H. RUINA (1992-2016)**

**RAYMOND J. SULLIVAN**  
**MONICA M. O'BRIEN**  
**MARY ELLEN O'CONNOR**  
**JAMES MURPHY**  
**OF COUNSEL**

**DONALD R. STEWART (RET.)**  
**MADGE E. GREENBLATT (RET.)**  
**ROBERT W. MANNING**  
**RICARDO A. BAEZ**  
**DAVID J. GOLDSMITH**  
**PETER MICHAEL DeCURTIS**  
**LAURETTA L. CONNORS**  
**JOHN K. HAMBERGER**  
**LISA LEVINE**  
**ANDREA L. De SALVIO**  
**KRISTY L. BEHR**  
**LUKE R. TARANTINO**  
**THOMAS A. LUMPKIN**  
**JONATHAN SO**

Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of

Misael FERNANDEZ, Appellant,

v.

REICO INTERNATIONAL REALTY, Respondent

WORKERS' COMPENSATION BOARD, Respondent.

January 16, 2020

**Facts:** This claimant had filed a claim for Workers' Compensation Benefits, and a discrimination claim against his employer alleging that he was discharged in retaliation for filing the Workers' Compensation claim. The claimant retained MFY Legal Services, Inc., a not-for-profit that provides free legal services in Workers' Compensation cases, and they obtained permission for a law school graduate to represent the claimant. The Board ultimately awarded damages as well as counsel fees, but in a modified decision rescinded the counsel fees because the legal representative was a law school graduate, not an attorney, and precluded under 12 NYCRR 302-1.6 from receiving fees.

**Holding:** Modified.

**Discussion:** Although Workers' Compensation Law Section 120 allows fees for an attorney or licensed representative to be imposed against the employer, regulation 12 NYCRR 302-1.6 expressly provides that representation of claimant's by law interns shall be without fee or any other remuneration. The Court rejected the argument that 12 NYCRR 302-1.6 did not apply to or conflicted with Section 120 and found no error with the Board's rescission of the fee. However, the attorney was admitted to the Bar prior to the conclusion of the Workers' Compensation claim, and could receive counsel fees for services rendered after being admitted.