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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of TUNIN ROMERO Respondent,

v.

CAPITAL CONCRETE et al., Appellants,

WORKERS' COMPENSATION BOARD, Respondent.

November 9, 2023

Facts: The claimant filed a workers' compensation claim naming Capital Concrete as his employer. The carrier was placed on notice but failed to file a FROI form or pre-hearing conference statement. The carrier failed to appear at the first hearing and the case was established. The carrier appealed the establishment of the claim. At the next hearing, the carrier raised the issue of coverage, but the WCLJ found that the carrier's arguments were not that of coverage but rather employer-employee relationship, which had already been decided. The carrier filed a second appeal. The Board Panel rejected the first appeal as untimely. Regarding the second appeal, the Board Panel affirmed the WCLJ determination.

Holding: *Affirmed.*

Discussion: The carrier could not state the specific objection made at a hearing in order to complete Item 15 on the RB-89 cover sheet therefore, there was no abuse in discretion in denying the carrier's first application for review. Regarding the carrier's appeal on the issue of coverage, the Court noted that the carrier does not dispute having workers' compensation insurance coverage to the employer at the time of the accident. Accordingly, any argument that the claimant did not work for the employer on the date of the accident does not speak to coverage but rather employer-employee relationship. The Court once again found no abuse of discretion.