

STEWART, GREENBLATT, MANNING & BAEZ

MADGE E. GREENBLATT (RET.)
ROBERT W. MANNING
RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LAURETTA L. CONNORS
LISA LEVINE
ANDREA L. De SALVIO
KRISTY L. BEHR
RAYMOND J. SULLIVAN
LUKE R. TARANTINO
THOMAS A. LUMPKIN
DIANE P. WHITFIELD

ATTORNEYS AT LAW
6800 JERICHO TURNPIKE

SUITE 100W
SYOSSET, NY 11791

516-433-6677

FAX 516-433-4342

DONALD R. STEWART (1949-2021)
KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)

JAMES MURPHY
SACHEE N. ARROYO
OF COUNSEL

State of New York Supreme Court, Appellate Division, Third Judicial Department, New York

In the Matter of LEONORE SALVIA, Appellant

v.

NUTRITIONAL FRONTIERS LLC, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

Decided November 30, 2023

Facts: The claimant was in a motor vehicle accident in August of 2013 and in January of 2014, a third-party action was commenced. In February of 2015, the claimant filed a claim for Workers' Compensation benefits for injuries arising out of the August 2013 accident. The claimant signed a discharge relieving her counsel from further representation in the third-party action prior to filing the Workers' Compensation claim.

In June of 2021, the employer and the Uninsured Employers' Fund requested further action seeking suspension of benefits on the ground that the claimant had settled a third-party action without their consent. There was also an issue raised regarding misrepresentations about the third-party action as the basis for a violation of Section 114-a of the Workers' Compensation Law. The Judge found that the claimant had not settled the third-party action without consent and found no violation under Section 114-a. The Board reversed the Judge on both grounds and discontinued indemnity payments. The claimant appeals.

Holding: *Decision modified to reverse finding of violation of Section 114-a.*

Rationale: The Court found that there was substantial evidence that supported the Board's determination that the claimant's third-party action had been settled without consent. However, with respect to the Board's finding of a violation of Workers' Compensation Law Section 114-a, based on its review of the record as developed, the Court found that the Board's characterization of the claimant's 2015 testimony to be based upon speculation and surmise and given that the Board's finding in this respect was central to its conclusion that the claimant had made a willful misrepresentation, the Court reversed the Board's finding.

Stewart, Greenblatt, Manning & Báez