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Supreme Court, New York County, New York,
Special Term.

SUN INS. OFFICE OF LONDON, Limited, et al.

v.

DUCAS.

Oct. 30, 1944.

Synopsis

Proceeding in the matter of the arbitration of controversies between Sun Insurance Office of London, Limited, and another, and Robert N. Ducas, pursuant to article 84, § 1448 et seq., of the Civil Practice Act. On motion to declare the appraiser designated by respondent disqualified on the ground that he is not disinterested.

Motion denied.

Attorneys and Law Firms

*9 Rein, Mound & Cotton, of New York City, for petitioners.

Joseph Haskell, of New York City, for respondent.

Opinion

*10 VALENTE, Justice.

This is a motion to declare an appraiser disqualified on the ground that he is not disinterested. The motion is denied. There is no showing whatsoever that the appraiser in question has any financial or other interest which would disqualify

him. It is to be noted that, under the terms of the very order providing for the appointment of appraisers, the appraisers designated by the respective parties are to be paid by said parties, so that the mere circumstance that the appraiser in question is to be paid by the respondent is not enough to disqualify him. Petitioner apparently relies upon his claim that the appraiser had urged that the insurer pay the amount which he had found to be the damage suffered. Statements that the appraiser 'took charge of the claim' and acted as 'an advocate on behalf of Mr. Ducas' are mere conclusory characterizations. All that actually appears to have happened is that the appraiser urged his estimate of the amount of the damages upon the insurance company. It is quite natural for an appraiser to attempt to vindicate his own findings and attempt to have others agree with him. His mere doing so is insufficient, in and of itself, to disqualify him on the ground that he is not a disinterested appraiser. For aught that appears in the papers the appraiser to be designated by the insurance company and paid by the latter cannot reasonably be expected to be any more disinterested than the appraiser now sought to be disqualified.

The petitioner, within five days from the service of a copy of this order with notice of entry, is to nominate an appraiser and give notice of his name and address in writing to the attorney for the respondent, and both appraisers shall, within fifteen days thereafter, select a competent and disinterested umpire. In the event of their failure to do so, an application may be made by either party on five days' notice to the other for the selection of an umpire by the court.

All Citations

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