CASE NO. 6091 CRB-4-16-4 : COMPENSATION REVIEW BOARD
CLAIM NOS. 700117212/700114582/
700134771

EDWARD FRANTZEN : WORKERS' COMPENSATION
CLAIMANT COMMISSION

v. : NOVEMBER 4, 2019

DAVENPORT ELECTRIC
EMPLOYER

and

OHIO CASUALTY INSURANCE COMPANY
INSURER

and

AMERICAN STATES INSURANCE COMPANY
INSURER
RESPONDENTS

APPEARANCES:

The interests of the claimant from July 13, 2007 to May 8, 2014 were represented by Enrico Vaccaro, Esq., Law Offices of Enrico Vaccaro, P.O. Box 120761, East Haven, CT 06512.

The interests of the claimant from March 18, 1999 to April 21, 2005 were represented by David M. Cohen, Esq., Sarah E. Gleason, Esq., and Adam J. Blank, Wofsey, Rosen, Kweskin & Kuriansky, L.L.P., 600 Summer Street, Stamford, CT 06901.

The respondents were not involved in the proceedings below and did not appear at oral argument.

This Petition for Review from the March 30, 2016 "Ruling on Remand From the Compensation Review Board" of Michelle D. Truglia, Commissioner acting for the Seventh District, was heard on November 30, 2018 before a Compensation Review Board panel consisting of Commission Chairman Stephen M. Morelli and Commissioners Scott A. Barton and Jodi Murray Gregg.[1]

OPINION

STEPHEN M. MORELLI, CHAIRMAN. Claimant's counsel ("appellant") has petitioned for review from the March 30, 2016 "Ruling on Remand from the Compensation Review Board" (ruling) of Michelle D. Truglia, Commissioner acting for the Seventh District. We find error and accordingly vacate the ruling and remand this matter for a trial de novo.

The procedural history of the instant appeal, which concerns a fee dispute between successive counsel, is long and storied. The claimant, who brought three separate claims for compensation benefits arising from alleged injuries to the left ankle and low back on September 15, 1994, a cervical injury of February 10, 1998, and a low back injury of October 9, 2003, entered into a full and final stipulation for $850,000 on May 8, 2014. The commissioner presiding over that hearing approved a 20 percent attorneys' fee and, on May 13, 2014, ordered the appellant to hold the funds in escrow until the dispute over the distribution of the fee was resolved. There was no indication at that time that a formal hearing would be required for anything other than a decision on

[1] We note that a motion for extension of time and a motion to stay were granted during the pendency of this appeal.

the division of the escrowed attorneys' fees; the issue of subject matter jurisdiction had not been raised.

Following the May 8, 2014 hearing, an attorney for the law firm which had represented the claimant prior to his representation by the appellant ("appellee") filed a brief to which she attached a copy of her fee agreement, a contemporaneous statement of time and charges, and other documents detailing her work for the claimant in his various claims before the commission.[2] The appellant subsequently also filed a brief, in which he limited his remarks to a challenge to the subject matter jurisdiction of the Workers' Compensation Commission ("commission") over the fee dispute and an attack on the validity of the appellee's claim to the escrowed attorneys' fee. He did not attach a copy of his own fee agreement with the claimant or include a statement of any time or charges to support his claim for fees.

On September 30, 2014, a formal hearing was held before the instant commissioner in order to address the appellant's challenge to the commission's subject matter jurisdiction and the distribution of fees in accordance with the May 13, 2014 order. No request was made to bifurcate the hearing to address the issue of the commission's subject matter jurisdiction separately from the fee dispute; accordingly, the commissioner addressed both issues in her finding. It was the appellant's position that

[2] Various attorneys with Wofsey, Rosen, Kweskin & Kuriansky, L.L.P., represented the interests of the claimant from March 18, 1999 to April 21, 2005; Allan Cane, Esq., represented the interests of the claimant from April 27, 2005 until the substitution of a new attorney on July 13, 2007; the appellant represented the interests of the claimant from July 13, 2007 until May 8, 2014. Attorney Cane did not appear for any of the proceedings involving the fee dispute. Given that several members of the firm of Wofsey, Rosen, Kweskin & Kuriansky, L.L.P., have appeared in this matter, in the interests of simplicity, we will refer to the firm as the "appellee."

once the original commissioner had approved the stipulation to settle the claim, the commission immediately lost subject matter jurisdiction over the attorneys' fee dispute. He further contended that the provisions of § 31-327 (b) C.G.S. deprive the commission of jurisdiction because they do "not *explicitly* provide the commission with authority to adjudicate a dispute between former and current counsel as to the division, if any, of a previously approved attorneys' fee…."[3] (Emphasis in the original.) July 21, 2015 Appellant's Brief, p. 9. The appellant maintained that the authority of the commission is statutorily confined to examining fee agreements to ensure they are consistent with fee guidelines.

The commissioner, noting that the fee in question arose from an award of workers' compensation benefits to the claimant rather than from a contract between the attorneys, concluded that the commission had subject matter jurisdiction over the fee dispute. In addition, stating that "it is manifestly unjust to ignore the contribution of prior attorneys simply because they were not the last to handle the file," February 19, 2015 Finding and Award, Conclusion, ¶ E, the commissioner found that the appellee had submitted a "legitimate fee agreement" which not only allowed it to claim as a fee an amount equal to 20 percent of any benefits collected on behalf of the claimant but to also claim a fee from any final settlement. Id., Conclusion, ¶ F.

The commissioner further remarked that when the appellant agreed to represent the claimant in 2007, he knew, or should have known, that the claimant had been

[3] General Statutes § 31-327 (b) states: "All fees of attorneys, physicians, podiatrists or other persons for services under this chapter shall be subject to the approval of the commissioner."

represented by two previous attorneys. As such, the appellant also should have known that "an apportionment of attorneys' fees was foreseeable" and that "he would likely be called upon to substantiate his contribution to the file with contemporaneous time records." Id., Conclusion, ¶ G. The commissioner concluded that in light of the appellant's failure to substantiate his time and charges, a fifty/fifty split of the escrowed attorneys' fee was fair and reasonable and accordingly awarded the appellant and the appellee $85,000 each.

The appellant appealed the February 19, 2015 Finding and Award to this tribunal, challenging the commissioner's conclusion that the commission retained subject matter jurisdiction over a dispute between successive counsel regarding allocation of an approved attorneys' fee subsequent to an approved stipulation. He also contended that the commissioner's decision to allocate the attorneys' fee constituted a deprivation of due process of law because the allocation was done in the absence of a full evidentiary hearing.

This board affirmed the commissioner's findings as to the commission's subject matter jurisdiction, stating, inter alia, that it found "nothing remotely ambiguous in the legislature's use of the word 'all' in § 31-327(b) C.G.S." Frantzen v. Davenport Electric, 5990 CRB-7-15-2 (February 24, 2016), *aff'd*, 179 Conn. App. 846, *cert. denied*, 328 Conn. 928 (2018). However, the board vacated the commissioner's conclusions relative to the apportionment of the escrowed funds and remanded the matter for a full evidentiary hearing on the issue. We noted that the statements made by the

commissioner at the formal hearing of September 30, 2014, seemed to reflect that the scope of her inquiry, consistent with the hearing notice, would be limited to determining whether the commission retained authority to adjudicate the fee dispute. See September 30, 2014 Transcript, pp. 4, 10. As such, we stated that:

> in light of the due process concerns raised by the issuance of findings which fell outside the stated scope of the inquiry, we have little choice but to vacate the trier's conclusions relative to the apportionment of the escrowed funds and remand this matter for a full evidentiary hearing on the issue. While additional proceedings are not necessarily in the best interests of judicial economy, we hold that under the particular circumstances of this matter, they are unavoidable.[4]

Id.

On March 22, 2016, a second formal hearing was held, resulting in the ruling which is the subject of this Opinion. In that ruling, the commissioner made the following findings which are pertinent to our review. A hearing notice was sent to all parties in February 2016, informing them that a formal hearing had been scheduled for March 22, 2016, relative to the issue of the apportionment of the attorneys' fees being held in escrow by the appellant. On Wednesday, March 16, 2016, the appellant faxed correspondence to the commission's fourth district office stating that he was unable to attend the formal hearing scheduled for March 22, 2016, because he had a Superior Court trial scheduled for March 21, 2016. The commissioner requested that the appellant fax

[4] The board also denied the appellee's motion to dismiss predicated on the appellant's three-week delay in filing his brief, noting that the appellee had presented no evidence that its interests had been prejudiced by the delay. The board further observed that because "the instant dispute over escrowed funds cannot be resolved absent either an agreement of the parties, which strikes us as highly unlikely, or litigation, we fail to perceive how the interests of justice would be served by granting a motion to dismiss at this point." Frantzen v. Davenport Electric, 5990 CRB-7-15-2 (February 24, 2016), *aff'd*, 179 Conn. App. 846, *cert. denied*, 328 Conn. 928 (2018).

confirmation of the scheduling conflict; however, the appellant never responded. During the six-day period prior to the formal hearing, the commission's court reporter made several telephone calls to the appellant informing him that his request to postpone the formal hearing had not been granted and the commission was still awaiting written confirmation of the scheduling conflict. The appellant never responded to the commission's request for confirmation.

Shortly before the March 22, 2016 formal hearing commenced, the commissioner was provided with a copy of an e-mail from the Connecticut Judicial Department website indicating that the appellant had filed an appeal with the Appellate Court on Friday, March 18, 2016. It was the commissioner's understanding that the appeal was from the portion of the board's Opinion affirming the commissioner's jurisdiction over the attorneys' fee dispute, given that the issue of apportionment was the subject of the remand. At the hearing, the commissioner stated that because Connecticut Practice Book § 61-11(b) does not provide for an automatic stay of appeal from administrative decisions, there was no reason to postpone the hearing.[5]

[5] Connecticut Practice Book § 61-11(b) states: "Under this section, there shall be no automatic stay in actions concerning attorneys pursuant to chapter 2 of these rules, in juvenile matters brought pursuant to chapters 26 through 35a, or in any administrative appeal except as otherwise provided in this subsection. Unless a court shall otherwise order, any stay that was in effect during the pendency of any administrative appeal in the trial court shall continue until the filing of an appeal or the expiration of the appeal period, or any new appeal period, as provided in Section 63-1. If an appeal is filed, any further stay shall be sought pursuant to Section 61-12. For purposes of this rule, 'administrative appeal' means an appeal taken from a final judgment of the trial court or the compensation review board rendered in an appeal from a decision of any officer, board, commission, or agency of the state or of any political subdivision thereof. In addition to appeals taken pursuant to the Uniform Administrative Procedure Act, 'administrative appeal' includes, among other matters, zoning appeals, teacher tenure appeals, tax appeals and unemployment compensation appeals."

Attorneys Judith Rosenberg and Adam Blank appeared on behalf of the appellee to present evidence in support of the firm's claim for attorneys' fees arising from the settlement of the underlying workers' compensation claim. The appellant did not appear; nor did he provide evidence of his purported scheduling conflict, despite having had four and one-half business days to do so since the March 16, 2016 letter and despite multiple attempts by commission staff members to contact him. Rosenberg took the stand and was examined by Blank on the breadth of the professional services rendered to the claimant during the period of representation from March 18, 1999 to April 21, 2005. A more detailed description of the services provided, additional correspondence, and a statement of time and charges for said services were entered into evidence as Respondents' Exhibit 1. Also included in the exhibit was a copy of the claimant's fee agreement with the appellee.

The commissioner concluded that Rosenberg had presented more than adequate justification for the appellee's receipt of one-half of the attorneys' fees from the settlement funds being held in escrow by the appellant. The commissioner also found that because the appellant had waited until four days before the March 22, 2016 formal hearing to request a postponement, and subsequently failed to provide written substantiation of the scheduling conflict, "there was no other conclusion to draw other than Attorney Vaccaro had no legitimate conflict precluding him from attending the March 22, 2016 formal proceedings." Conclusion, ¶ A. As such, the commissioner

determined that there had been "no justification to postpone the formal proceedings on remand before the commission." Id.

In addition, the commissioner found that the appellant, in light of his failure to attend the March 22, 2016 formal hearing, had presented no evidence that would warrant him being awarded a higher percentage of the escrowed attorneys' fees than the 50 percent share she had awarded in her original February 19, 2015 Finding and Award. The commissioner therefore again awarded 50 percent of the escrowed attorneys' fees, or $85,000, to the appellee and 50 percent, or $85,000, to the appellant.

On April 19, 2016, the appellant filed a timely Petition for Review, and by motion dated April 30, 2016, the appellant requested an extension of time until June 16, 2016, for filing his Reasons for Appeal, which was granted. On October 20, 2016, the appellant filed a motion for stay, in which he argued that a stay of proceedings would "conserve the resources of the parties as well as of the commission," October 20, 2016 Motion for Stay, p. 1., given that a favorable decision by the Appellate Court on his behalf would render "all proceedings by the commission on this case null and void." Id. The appellant also asserted that granting his motion would not result in prejudice to any party and affirmed that "the disputed funds are being held in escrow by agreement of the parties in a financial institution." Id., 2. The appellant's motion was granted on October 21, 2016.

On October 26, 2016, the appellee filed a Motion for Reconsideration of Order to Stay and Objection to Motion for Stay, arguing that the appellant's motion should be reconsidered because the appellee:

> did not receive notice of the motion until after it was decided by the Board; the basis for [the appellant's] appeal to the Appellate Court is frivolous and not dispositive of the issue currently pending before the Board; it is in the interest of judicial economy for the Board to rule on the proper allocation of fees now so that any appeal by [the appellant] of the order can be consolidated with his current appeal to the Appellate Court; and [the appellee] is prejudiced by a stay….

Appellee's Motion for Reconsideration of Order to Stay and Objection to Motion for Stay, p. 1.

On November 14, 2016, the appellant filed an Objection to Motion for Reconsideration of Order to Stay and Reply to Objection to Motion for Stay in which he pointed out that although Connecticut Practice Book § 66-8 provides for the dismissal of a frivolous appeal, the appellee did not file such a motion, "because there was no good faith basis for doing so…."[6] Appellant's Objection to Motion for Reconsideration of Order to Stay and Reply to Objection to Motion for Stay, pp. 1-2. The appellant also contended that the commission has never been "given jurisdiction pursuant to any explicit statutory language to adjudicate any dispute between attorneys as to the division of fees," id., and the issue at bar is therefore one of first impression. In addition, the appellant challenged the appellee's assertions relative to its concern over the "fate," id., of the escrowed funds and the appellee's contention that a stay of proceedings was not in the

[6] Connecticut Practice Book § 66-8 states: "Any claim that an appeal or writ of error should be dismissed, whether based on lack of jurisdiction, failure to file papers within the time allowed or other defect, shall be made by a motion to dismiss the appeal or writ. Any such motion must be filed in accordance with Sections 66-2 and 66-3 within ten days after the filing of the appeal or the return day of the writ, or if the ground alleged subsequently occurs, within ten days after it has arisen, provided that a motion based on lack of jurisdiction may be filed at any time. The court may on its own motion order that an appeal be dismissed for lack of jurisdiction."

interest of judicial economy because the appellant was likely to appeal any decision made by this board relative to apportionment of the attorneys' fee.

The board, having determined that the appeal pending before the Appellate Court clearly implicated the commission's subject matter jurisdiction to adjudicate a fee dispute between counsel of record, granted the stay, noting that "[i]t is axiomatic that a challenge to the commission's subject matter jurisdiction must be addressed before the underlying merits of a claim can be assessed." February 21, 2017 "Ruling Re: Reconsideration of the October 21, 2016 Order of the Compensation Review Board Granting Appellant's Motion to Stay." See also Castro v. Viera, 207 Conn. 420, 429 (1988). As such, we indicated that "the interests of all parties concerned will be better served by waiting for a determination from the higher courts on this point before proceeding with litigation over the other elements of the dispute." [7] Id.

On February 27, 2018, the Appellate Court released its decision in this matter affirming this board's Opinion relative to the commission's subject matter jurisdiction.[8] The court, in reliance upon its prior decision in Prioli v. State Library, 64 Conn. App. 301, *cert denied*, 258 Conn. 917 (2001), stated that contrary to the appellant's representations, the provisions of "§ 31-327 (b) both modified subsection (a) *and* provided that all attorney's fees are subject to the commissioner's approval." (Emphasis in the original.) Frantzen v. Davenport Electric, 179 Conn. App. 846, *cert. denied*,

[7] We also remarked that "[f]rankly, we believe that the interest of the parties would be best served if they were able to resolve this dispute between themselves." February 21, 2017 "Ruling Re: Reconsideration of the October 21, 2016 Order of the Compensation Review Board Granting Appellant's Motion to Stay."
[8] See Frantzen v. Davenport Electric, 179 Conn. App. 846, 856, *cert. denied*, 328 Conn. 928 (2018).

328 Conn. 928 (2018), *citing* Prioli, supra, 308-309. The court therefore held that "under a plain reading of § 31-327 (b), we conclude that the statute unambiguously provides that the division of attorney's fees between successive counsel is subject to the commissioner's approval." Id., 853. As such, the statute "grants the commission the authority to adjudicate fee disputes between successive counsel concerning their representations of a claimant before the commission."[9] Id., 855.

On April 18, 2018, the Supreme Court denied the appellant's certification to appeal from the Appellate Court's decision, and on July 12, 2018, this board granted the appellee's "Motion to Relieve Stay and Set Briefing Deadline." On November 30, 2018, the parties appeared before this board to argue their respective positions relative to the merits of the commissioner's March 30, 2016 "Ruling on Remand from the Compensation Review Board" in which the commissioner had once again ordered that the escrowed attorneys' fee be split evenly between the appellant and the appellee.[10]

On appeal, the appellant contends that the commissioner erred in failing to disqualify herself from adjudicating the fee dispute, in contravention of the provisions of Connecticut Practice Book §§ 1-22 and 76-1; General Statutes § 51-183c; and the due

[9] The Appellate Court dismissed the appellant's constitutional claim that his right to jury trial was violated, stating that "[i]t is well established that there is no right to a jury trial in proceedings before the commission." Frantzen v. Davenport Electric, 179 Conn. App. 846, 856, *cert. denied*, 328 Conn. 928 (2018).

[10] In the interim, this board dismissed as moot yet another appeal in this matter relative to the merits of the underlying claim which had been brought by the claimant prior to the settlement of the claim by way of full and final stipulation of May 8, 2014. See Frantzen v. Davenport Electric, 5771 CRB-4-12-8 (July 20, 2018).

process clause of the United States constitution.[11] The appellant also contends that the commissioner's refusal to grant his request for a continuance of the formal hearing constituted an abuse of discretion, and her decision to proceed with the formal hearing in the appellant's absence denied the appellant the due process of law. Finally, the appellant argues that the commissioner's decision to award 50 percent of the escrowed attorneys' fee, or $85,000, to the appellee was in contravention of the provisions of July 20, 2001 Workers' Compensation Commission Memorandum Number 2001-3 ("Claimant's Attorney Fee Guidelines") and Rule 1.5 of the Rules of Professional Conduct.[12]

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[11] Practice Book § 1-22 states in relevant part: "(a) A judicial authority shall, upon motion of either party or upon its own motion, be disqualified from acting in a matter if such judicial authority is disqualified from acting therein pursuant to Rule 2.11 of the Code of Judicial Conduct or because the judicial authority previously tried the same matter and a new trial was granted therein or because the judgment was reversed on appeal…."

Practice Book § 76-1 states: "Except as otherwise noted in Sections 76-2 through 76-6, the practice and procedure for appeals to the Appellate Court (1) from a decision of the Compensation Review Board (board), or (2) from a decision of a workers' compensation commissioner acting pursuant to General Statutes § 31-290a(b) (§ 31-290a commissioner), shall conform to the rules of practice governing other appeals."

General Statutes § 51-183 (c) states in relevant part: "No judge of any court who tried a case without a jury in which a new trial is granted, or in which the judgment is reversed by the Supreme Court, may again try the case."

The fifth amendment to the United States constitution (the "due process clause") provides: "No person shall be … deprived of life, liberty, or property, without due process of law…."

[12] The July 20, 2001Workers' Compensation Commission Memorandum Number 2001-3 ("Claimant's Attorney Fee Guidelines") provides in relevant part: "Every attorney seeking a fee from an injured worker in a workers' compensation claim is required to enter into a written fee agreement at the time the injured worker engages the attorney's representation…. A Workers' Compensation Commissioner has great discretion pursuant to Connecticut General Statutes Sections 31-280 (b) (11) (C) and 31-327 to determine the appropriate legal fee when an injured worker or the injured worker's dependent(s) are represented by an attorney. The Commissioner should articulate the basis for the approval of an attorney's fee by a Finding or Order. Such awarded fee shall not be set aside by the Compensation Review Board unless the Board finds a clear abuse of discretion on the part of the Commissioner…."

Rules of Professional Conduct 1.5 states in relevant part: "(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses…. (b) The scope of the representation, the basis or rate of the fee and expenses for which the client will be responsible, shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client in writing before the fees or expenses to be billed at higher rates are actually incurred…."

The standard of review we are obliged to apply to a trial commissioner's findings and legal conclusions is well-settled. "The trial commissioner's factual findings and conclusions must stand unless they are without evidence, contrary to law or based on unreasonable or impermissible factual inferences." Russo v. Hartford, 4769 CRB-1-04-1 (December 15, 2004), *citing* Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Moreover, "[a]s with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Burton v. Mottolese, 267 Conn. 1, 54 (2003), *quoting* Thalheim v. Greenwich, 256 Conn. 628, 656 (2001). "This presumption, however, can be challenged by the argument that the trial commissioner did not properly apply the law or has reached a finding of fact inconsistent with the evidence presented at the formal hearing." Christensen v. H & L Plastics Co., Inc., 5171 CRB-3-06-12 (November 19, 2007).

The appellant in this matter has advanced several broad claims of error which, in his estimation, should serve to justify the reversal of the commissioner's findings. Quite frankly, we find few of his claims of error particularly meritorious. For instance, the appellant's arguments to the contrary notwithstanding, we are not persuaded that the commissioner's decision to proceed with the formal hearing of March 22, 2016, constituted error in and of itself. It is well-settled that the decision to grant or deny a request for continuance lies well within a commissioner's discretion. See Concerned

Citizens of Sterling, Inc. v. Connecticut Sitting Council, 215 Conn. 474, 485 (1990); see also General Statutes § 31-298.[13]

Moreover, when we originally remanded this matter on February 24, 2016, our concern at that time stemmed from the fact that the commissioner's conclusions regarding the appropriate division of the attorneys' fee appeared to go beyond the scope of the issues the parties anticipated would be addressed at the formal hearing. It was our expectation that additional evidentiary proceedings would result in factual findings which would provide a reasonable basis for the allocation of the disputed fee. Unfortunately, the commissioner elected to issue her ruling solely on the basis of evidence accumulated during the March 22, 2016 hearing, and we are not persuaded that the evidence garnered at that time constitute a sufficient basis for affirming the ruling. Had the commissioner chosen to continue the formal proceedings in order to allow the appellant the opportunity to appear at a later date and present his arguments regarding the proper allocation of the disputed fee, and to allow the parties to conduct cross-examination if they so chose, then the ruling would have rested on a more solid evidentiary foundation. This did not happen and, as a result, we are compelled to vacate the ruling and remand this matter for a trial de novo.

[13] General Statutes § 31-298 states in relevant part: "In all cases and hearings under the provisions of this chapter, the commissioner shall proceed, so far as possible, in accordance with the rules of equity. He shall not be bound by the ordinary common law or statutory rules of evidence or procedure, but shall make inquiry, through oral testimony, deposition testimony or written and printed records, in a manner that is best calculated to ascertain the substantial rights of the parties and carry out the provisions and intent of this chapter."

In light of this decision, we decline to reach the appellant's claim of error relative to the instant commissioner's failure to recuse herself from adjudicating the formal hearing on remand. We note that the appellant has brought to our attention several statutory and practice book provisions which would appear to suggest that recusal might have been advisable; however, we would also point out that the Workers' Compensation Commission is a "creature of statute," and "[i]t is a familiar principle that a court which exercises a limited and statutory jurisdiction is without jurisdiction to act unless it does so under the precise circumstances and in the manner particularly prescribed by the enabling legislation."[14] Castro v. Viera, 207 Conn. 420, 427-428 (1988), *quoting* Heiser v. Morgan Guaranty Trust Co., 150 Conn. 563, 565 (1963). As such, although the issue of the applicability in the workers' compensation forum of the various statutory provisions invoked by the appellant might be worthy of analysis, our decision to remand this matter for a new trial renders this Opinion an inappropriate vehicle to conduct that discussion.[15]

We are similarly disinclined, for the same reason, to enter into an examination of the appellant's contentions concerning the appellee's entitlement to the disputed fee. Rather, we would strenuously urge the appellant to avail himself of the earliest opportunity to place these arguments in front of a fact-finder, where they belong.[16]

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[14] We would note that the second prong of Practice Book § 76-1 appears to limit the statute's applicability to appeals "from a decision of a workers' compensation commissioner acting pursuant to General Statutes § 31-290a (b) (§ 31-290a commissioner)."

[15] For similar reasons, we decline to review the appellant's contentions regarding his claim that his constitutional due process rights were violated.

[16] In light of our decision to remand this matter for a new trial, we therefore decline to rule on the appellant's motion to submit additional evidence.

We sympathize with, and share, the commissioner's frustration with the protracted litigation that has resulted from what should have been an ordinary "housekeeping" matter. It is fervently hoped that by assigning this appeal for a new trial, a "fresh start" will enable the parties to bring this matter to the resolution that should have been attained a long time ago.

There is error; the March 30, 2016 "Ruling on Remand from the Compensation Review Board" of Michelle D. Truglia, Commissioner acting for the Seventh District, is accordingly vacated and the matter is remanded for a new trial.

Commissioners Scott A. Barton and Jodi Murray Gregg concur in this Opinion.