

Andrias, J.P., Sweeny, Moskowitz, Freedman, Richter, JJ.

8090            Public Adjustment Bureau, Inc.,            Index 601202/05  
                 Plaintiff-Appellant,

-against-

Greater New York Mutual Insurance Company,  
Defendant.

Seward Park Housing Corp.,  
Defendant-Respondent,

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Weg and Myers, P.C., New York (Joshua L. Mallin of counsel), for  
appellant.

Anderson & Ochs, LLP, New York (Mitchel H. Ochs of counsel), for  
respondent.

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Order, Supreme Court, New York County (Louis B. York, J.),  
entered August 22, 2011, which granted defendant Seward Park  
Housing Corp.'s motion for summary judgment dismissing the  
complaint, and denied plaintiff's cross motion for summary  
judgment on its breach of contract claim, unanimously modified,  
on the law, to deny defendant's motion, and otherwise affirmed,  
without costs.

Defendant Seward Park retained plaintiff, a public adjuster,  
to assist and advise it in the preparation, submission and  
adjustment of a property damage claim against its insurance  
carrier, defendant Greater New York Mutual Insurance Company.  
Pursuant to the written retainer agreement, Seward Park agreed to

pay plaintiff 7% of the amount of loss "when adjusted or otherwise recovered." The claim was not adjusted; following extensive litigation, Seward Park settled with Greater New York.

We reject Seward Park's argument that plaintiff is not due any fee under the contract because it neither adjusted the claim nor provided "valuable services" that resulted in the adjustment of the claim (see 11 NYCRR 25.10). In light of the "otherwise recovered" language in the retainer agreement, we find that adjustment of the claim is not a condition precedent to plaintiff's recovery of a fee (see *GS Adj. Co., Inc. v Roth & Roth, L.L.P.*, 85 AD3d 467 [1st Dept 2011]; see also *Goldstein Affiliates v Affiliated FM Ins. Co.*, 178 AD2d 301 [1st Dept 1991]). However, the record presents an issue of fact whether plaintiff performed valuable services.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: SEPTEMBER 25, 2012

  
CLERK