

**SUPREME COURT OF THE STATE OF NEW YORK**  
*Appellate Division, Fourth Judicial Department*

1236

CA 13-00813

PRESENT: SCUDDER, P.J., CENTRA, LINDLEY, SCONIERS, AND VALENTINO, JJ.

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JASON T. PILKENTON, PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

NEW YORK CENTRAL MUTUAL FIRE INSURANCE COMPANY,  
RESPONDENT-APPELLANT.

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RUPP, BAASE, PFALZGRAF, CUNNINGHAM & COPPOLA LLC, BUFFALO (MARCO  
CERCONE OF COUNSEL), FOR RESPONDENT-APPELLANT.

JASON T. PILKENTON, PETITIONER-RESPONDENT PRO SE.

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Appeal from an order of the Supreme Court, Livingston County (Dennis S. Cohen, A.J.), entered April 3, 2013. The order granted the petition seeking, inter alia, to direct respondent to submit to the appraisal process set forth in its policy of insurance.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law without costs and the petition is denied.

Memorandum: Respondent appeals from an order that granted the petition seeking, inter alia, to direct respondent to submit to the appraisal process set forth in its policy of insurance. Assuming without deciding that the petition was timely filed and procedurally proper, we agree with respondent that the insurance coverage dispute precludes the application of the appraisal process set forth in the policy (see *Kawa v Nationwide Mut. Fire Ins. Co.*, 174 Misc 2d 407, 408-409; see generally *Amerex Group, Inc. v Lexington Ins. Co.*, 678 F3d 193, 204 [2d Cir]). Insurance Law § 3408 (c) provides for an appraisal in the event of a covered loss, and here there is a pending declaratory judgment action in which the parties dispute whether this is a covered loss.

Entered: December 27, 2013

Frances E. Cafarell  
Clerk of the Court