

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D13682
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_____AD3d_____

Argued - December 18, 2006

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
ROBERT A. LIFSON
JOSEPH COVELLO, JJ.

2006-00958

DECISION & ORDER

In the Matter of General Assurance Company,
appellant, v Christian C. Garcia, et al., respondents,
Albeiro Rivera, et al., additional respondents-
respondents.

(Index No. 4720/05)

Kenneth Adler, Melville, N.Y., for appellant.

Rivkin Radler, LLP, Uniondale, N.Y. (Evan H. Krinick, Cheryl F. Korman, and Stuart M. Bodoff of counsel), for additional respondent-respondent State Farm Mutual Automobile Insurance Company.

In a proceeding pursuant to CPLR article 75, inter alia, to permanently stay the arbitration of uninsured motorist claims, the petitioner appeals from an order and judgment (one paper) of the Supreme Court, Queens County (Conway, Ct. Atty. Ref.), entered December 22, 2005, which, after a hearing, denied that branch of the petition which was to permanently stay the arbitration and directed the petitioner to proceed to arbitration.

ORDERED that the order and judgment is affirmed, with costs.

State Farm Automobile Mutual Insurance Company demonstrated that it met the requirements set forth in *Thrasher v United States Liab. Ins. Co.* (19 NY2d 159, 168-169) (*see Matter of Empire Mut. Ins. Co. [Stroud and Boston Old Colony Ins. Co.]*, 36 NY2d 719, 721) to disclaim coverage on the ground of lack of cooperation of its insured, Albeiro Rivera (*see Matter of Continental Ins. Co. v Lulanaj*, 33 AD3d 614; *Allstate Ins. Co. v United Intl. Ins. Co.*, 16 AD3d

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605). Accordingly, Rivera's vehicle was uninsured and, as such, the Supreme Court properly denied that branch of the petition which was to permanently stay the arbitration of the claims for uninsured motorist benefits and directed the petitioner to proceed to arbitration.

The petitioner's remaining contentions are unpreserved for appellate review or without merit.

SPOLZINO, J.P., FLORIO, LIFSON and COVELLO, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court