

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

D15886
C/hu

_____AD3d_____

Argued - June 4, 2007

ROBERT W. SCHMIDT, J.P.
GLORIA GOLDSTEIN
JOSEPH COVELLO
THOMAS A. DICKERSON, JJ.

2006-02866

DECISION & ORDER

In the Matter of Liberty Mutual Insurance
Company, respondent, v Giovanni P. Rapisarda,
appellant.

(Index No. 17512/02)

Scott Baron & Associates, P.C., Howard Beach, N.Y. (Andrea R. Palmer and
Stephen Chakwin of counsel), for appellant.

Bee Ready Fishbein Hatter & Donovan, LLP, Mineola, N.Y. (Joshua M. Jemal and
Allyson D. Johnson-Flash of counsel), for respondent.

In a proceeding pursuant to CPLR article 75 to permanently stay arbitration of a claim
for underinsured motorist benefits, the appeal is from an order of the Supreme Court, Queens County
(Rios, J.), dated January 31, 2006, which granted the petition and permanently stayed arbitration.

ORDERED that the order is affirmed, with costs.

The appellant failed to provide the petitioner with notice of his underinsured motorist
claim as soon as practicable as required by the insurance policy. Under the circumstances, the court
providently exercised its discretion in granting the petition (*see Matter of Metropolitan Prop. & Cas.*
Ins. Co. v Mancuso, 93 NY2d 487, 495; *Matter of State Farm Mut. Auto. Ins. Co. v Bombace*, 5
AD3d 782; *Matter of Nationwide Mut. Ins. Co. v DiGregorio*, 294 AD2d 579, 580; *Matter of State*

September 18, 2007

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MATTER OF LIBERTY MUTUAL INSURANCE COMPANY v RAPISARDA

Farm Mut. Auto. Ins. Co. v Bennett, 289 AD2d 496, 497; *Matter of Interboro Mut. Indem. Ins. Co. v Sarno*, 277 AD2d 454, 454-455; *Matter of Nationwide Mut. Ins. Co. v Wexler*, 276 AD2d 490, 490-491).

SCHMIDT, J.P., GOLDSTEIN, COVELLO and DICKERSON, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court