

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

D17919
X/kmg

_____AD3d_____

Argued - January 4, 2008

ROBERT A. SPOLZINO, J.P.
ANITA R. FLORIO
HOWARD MILLER
THOMAS A. DICKERSON, JJ.

2006-10861

DECISION & ORDER

In the Matter of Dairyland Insurance Company,
appellant, v Luis Figueroa, respondent.

(Index No. 32120/05)

Hammill, O'Brien, Croutier, Dempsey & Pender, P.C., Syosset, N.Y. (Anton Piotroski of counsel), for appellant.

Bader Yakaitis & Nonnenmacher, LLP, New York, N.Y. (Darlene S. Miloski of counsel), for respondent.

In a proceeding pursuant to CPLR article 75, inter alia, to permanently stay arbitration of an uninsured motorist claim, the petitioner Dairyland Insurance Company appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County (Jacobson, J.), dated September 13, 2006, as denied that branch of its petition which was for a permanent stay of arbitration.

ORDERED that the order is affirmed insofar as appealed from, with costs.

The appellant Dairyland Insurance Company (hereinafter Dairyland) commenced this proceeding, inter alia, to permanently stay arbitration of a claim for uninsured motorist benefits by its insured, the respondent Luis Figueroa. The Supreme Court denied such relief pursuant to CPLR 7503(c). We affirm, albeit for different reasons than those stated by the Supreme Court.

Dairyland did not apply for a permanent stay of arbitration within the 20-day time limitation of CPLR 7503(c) (*see Matter of Steck [State Farm Ins. Co.]*, 89 NY2d 1082; *Matter of*

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Matarasso [Continental Cas. Co.], 56 NY2d 264; *Matter of Lejbik v Allstate Indem. Co.*, 40 AD3d 644). However, since the basis for the permanent stay was that the parties had never agreed to arbitrate, an exception to this time limitation, the Supreme Court erred in concluding that the petition was untimely pursuant to CPLR 7503(c) (*see Matter of Steck [State Farm Ins. Co.]*, 89 NY2d 1082; *Matter of Matarasso [Continental Cas. Co.]*, 56 NY2d 264; *Matter of Lejbik v Allstate Indem. Co.*, 40 AD3d 644). However, a permanent stay of arbitration was nonetheless properly denied. Under New York law, Dairyland is obligated to provide Figueroa with uninsured motorist benefits (*see Insurance Law § 5107; Matter of Allstate Ins. Co v Lopez*, 266 AD2d 209; *Matter of Midwest Mut. Ins. Co. v Pisani*, 250 AD2d 512).

SPOLZINO, J.P., FLORIO, MILLER and DICKERSON, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court