

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

D18452  
C/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - January 28, 2008

ROBERT A. SPOLZINO, J.P.  
FRED T. SANTUCCI  
DANIEL D. ANGIOLILLO  
RUTH C. BALKIN, JJ.

2007-04784

DECISION & ORDER

In the Matter of Progressive Casualty Insurance  
Company, appellant, v Cynthia Jackson, et al.,  
respondents.

(Index No. 6388/07)

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Buratti, Kaplan, McCarthy & McCarthy, Yonkers, N.Y. (Michael A. Zarkower of  
counsel), for appellant.

Martin, Fallon & Mullé, Huntington, N.Y. (Richard C. Mullé and Stephen P. Burke  
of counsel), for respondents.

In a proceeding pursuant to CPLR article 75, inter alia, to permanently stay arbitration  
of an uninsured motorist claim, the appeal is from an order of the Supreme Court, Suffolk County  
(Weber, J.), dated April 20, 2007, which denied the petition and dismissed the proceeding.

ORDERED that the order is affirmed, with costs.

On April 22, 2005, a car owned by the respondent Cynthia Jackson and insured by the  
petitioner, Progressive Casualty Insurance Company (hereinafter Progressive), was involved in an  
accident with a car owned by the respondent Leonard Dinardo and allegedly insured by the  
respondent State Farm Mutual Automobile Insurance Company (hereinafter State Farm). However,  
State Farm had cancelled Dinardo's policy before the accident occurred. Contrary to Progressive's  
contention, the State Farm notice of cancellation was effective since it informed the insured of a  
means "via which the cancellation of his policy could be challenged" (*Matter of State Farm v Mut.  
Auto. Ins. Co.*, 104 AD2d 495, 496; see *Silverstein v Minkin*, 49 NY2d 260; *Matter of Prudential  
Prop. & Cas. Ins. Co. v Rothman*, 116 AD2d 652; *Matter of Lumbermens Mut. Cas. Co. v Medina*,

March 18, 2008

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114 AD2d 959). Accordingly, since there is otherwise no dispute that the State Farm cancellation notice contained all of the information required by Vehicle and Traffic Law § 313 and the New York Automobile Insurance Plan rules regarding cancellation of automobile insurance, the Supreme Court correctly refused to permanently stay arbitration of the uninsured motorist claim.

Under the circumstances of this case, it was also a provident exercise of the court's discretion to, in effect, deny that branch of the petition which sought the alternate relief of pre-arbitration discovery (see *Matter of State Wide Ins. Co. v Womble*, 25 AD3d 713; *Matter of New York Cent. Mut. Fire Ins. Co. v Gershovich*, 1 AD3d 364).

SPOLZINO, J.P., SANTUCCI, ANGIOLILLO and BALKIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court