

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

D21049
Y/prt

_____AD3d_____

Argued - October 14, 2008

ROBERT A. LIFSON, J.P.
FRED T. SANTUCCI
RUTH C. BALKIN
ARIEL E. BELEN, JJ.

2007-10382
2008-03505

DECISION & ORDER

In the Matter of Allstate Insurance Company,
appellant, v Sung Sun Ju, etc., et al., respondents,
et al., proposed additional respondents.

(Index No. 18959/05)

Robert P. Tusa (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D. Sweetbaum], of counsel), for appellant.

Sackstein Sackstein & Lee, LLP, Garden City, N.Y. (Laurence D. Rogers of counsel), for respondents.

In a proceeding pursuant to CPLR article 75 to permanently stay arbitration of an underinsured motorist claim, the petitioner appeals from (1) an order of the Supreme Court, Nassau County (Martin, J.), dated September 11, 2007, as amended April 4, 2008, which granted the respondents leave to reargue the petition, which had been granted by a prior order of the same court dated December 22, 2006, and, upon reargument, denied the petition, and (2) an order of the same court dated April 4, 2008, which amended the order dated September 11, 2007.

ORDERED that order dated September 11, 2007, as amended April 4, 2008, is affirmed; and it is further,

ORDERED that the appeal from the order dated April 4, 2008, is dismissed as academic; and it is further,

ORDERED that one bill of costs is awarded to the respondents.

November 12, 2008

Page 1.

MATTER OF ALLSTATE INSURANCE COMPANY v SUNG SUN JU

We decline the invitation of the petitioner, Allstate Insurance Company, “made for the first time on appeal, to reconsider our case law . . . and hold that the Superintendent of Insurance exceeded his authority in promulgating 11 NYCRR 60-2.3(f)(1)(c)(3)(ii)” because that regulation expanded upon the definition of an underinsured motorist as set forth in Insurance Law § 3420(f)(2)(A) (*Matter of Allstate Ins. Co. v Dawkins*, 52 AD3d 826; see *Raffellini v State Farm Mut. Auto. Ins. Co.*, 9 NY3d 196).

The petitioner’s remaining contention is without merit.

LIFSON, J.P., SANTUCCI, BALKIN and BELEN, 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