

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

D23517  
C/kmg

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

Argued - May 5, 2009

ANITA R. FLORIO, J.P.  
HOWARD MILLER  
JOSEPH COVELLO  
LEONARD B. AUSTIN, JJ.

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2008-05541

DECISION & ORDER

In the Matter of Progressive Northeastern  
Insurance Company, appellant, v Ronny D.  
Harding, respondent.

(Index No. 17137/07)

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

Thomas Guccione (Thomas Torto, New York, N.Y., of counsel), for respondent.

In a proceeding pursuant to CPLR article 75 to permanently stay arbitration of a claim for uninsured motorist benefits, the petitioner appeals from an order of the Supreme Court, Kings County (Kurtz, Ct. Atty. Ref.), dated April 4, 2008, which, after a hearing, denied the petition and, in effect, directed the parties to proceed to arbitration.

ORDERED that the order is affirmed, with costs.

The record supports the Supreme Court's determination that there was physical contact between the vehicle of the petitioner's insured and an unidentified vehicle (*see Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499). Accordingly, the Supreme Court properly denied the petition and, in effect, directed the parties to proceed to arbitration (*cf. Matter of Nova Cas. Co. v Musco*, 48 AD3d 572, 573).

FLORIO, J.P., MILLER, COVELLO and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court

June 16, 2009

MATTER OF PROGRESSIVE NORTHEASTERN INSURANCE COMPANY v HARDING