

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

D29205
Y/prt

_____AD3d_____

Argued - November 1, 2010

PETER B. SKELOS, J.P.
RUTH C. BALKIN
RANDALL T. ENG
LEONARD B. AUSTIN, JJ.

2010-00083

DECISION & ORDER

In the Matter of Auto One Insurance Company,
appellant, v Roger C. Forrester, et al., respondents,
State Farm Mutual Automobile Insurance Company,
respondent-respondent.

(Index No. 26586/08)

David J. Tetlak, Huntington Station, N.Y. (Albert J. Galatan of counsel), for
appellant.

Rivkin Radler, LLP, Uniondale, N.Y. (Evan H. Krinick, Cheryl F. Korman, and Stuart
M. Bodoff of counsel), for respondent-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 September 17, 2009, which, inter alia, denied that branch of
the petition which was to permanently stay arbitration.

ORDERED that the order is affirmed, with costs.

While the initial burden of demonstrating a valid cancellation of an insurance policy
is on the insurance company which disclaims coverage, once that insurance company makes a prima
facie showing that it timely and validly cancelled coverage, the burden shifts to the party disputing
coverage to establish noncompliance with statutory cancellation requirements as to form and
procedure (*see GEICO Indem. v Roth*, 56 AD3d 1244, 1245; *Matter of State Farm Mut. Auto. Ins.
Co. v Cherian*, 202 AD2d 434, 435). Here, the facts stipulated to by the parties, together with the

evidence offered by State Farm Mutual Automobile Insurance Company, were sufficient to demonstrate, prima facie, that it timely and validly cancelled the automobile insurance policy issued to the owner of the offending vehicle (*see GEICO Indem. v Roth*, 56 AD3d at 1245; *Matter of State Farm Mut. Auto. Ins. Co. v Cherian*, 202 AD2d at 435; *see also Matter of Progressive Northeastern Ins. Co. v Robbins*, 279 AD2d 631, 632). The burden thus shifted to the petitioner insurance company to establish noncompliance with statutory cancellation requirements. Contrary to the petitioner's contention, it did not sustain its burden here because it failed to demonstrate that the subject notice of cancellation failed to comply with the statutory requirements of either Vehicle and Traffic Law § 313 or Insurance Law § 3425(c)(1)(A). Accordingly, the Supreme Court properly denied that branch of the petition which was to permanently stay arbitration.

SKELOS, J.P., BALKIN, ENG and AUSTIN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court