

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

D29347
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_____AD3d_____

Argued - November 18, 2010

A. GAIL PRUDENTI, P.J.
MARK C. DILLON
RUTH C. BALKIN
CHERYL E. CHAMBERS, JJ.

2010-05010

DECISION & ORDER

In the Matter of Progressive Preferred Insurance
Company, appellant, v Karen Townsend, et al.,
respondents-respondents, et al., respondent.

(Index No. 27439/09)

Kaplan, Hanson, McCarthy, Adams, Finder & Fishbein, Yonkers, N.Y. (Michael A. Zarkower of counsel), for appellant.

Polanco & Associates, PLLC, Queens Village, N.Y. (Jose C. Planco of counsel), for respondent-respondent Karen Townsend.

Cruz & Gangi (Goldman & Grossman, New York, N.Y. [Jay S. Grossman], of counsel), for respondent-respondent Motor Vehicle Accident Indemnification Corporation.

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, Queens County (Rios, J.), dated April 21, 2010, which denied the petition and directed the parties to proceed to arbitration.

ORDERED that the order is affirmed, with one bill of costs.

Once the petitioner disclaimed liability coverage of the subject vehicle under the livery use exclusion provision of the subject insurance policy, the vehicle was rendered an uninsured motor vehicle under the policy, as required by Insurance Law § 3420(f)(1), and the respondent Karen

December 14, 2010

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Townsend was entitled to seek uninsured motorist benefits (*see Matter of Liberty Mut. Ins. Co. v Saravia*, 271 AD2d 534; *see generally Matter of Liberty Mut. Ins. Co. [Hogan]*, 82 NY2d 57). Accordingly, the Supreme Court properly denied the petition and directed the parties to proceed to arbitration.

PRUDENTI, P.J., DILLON, BALKIN and CHAMBERS, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court