

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

D31319
O/kmb

_____AD3d_____

Argued - April 21, 2011

A. GAIL PRUDENTI, P.J.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
SHERI S. ROMAN, JJ.

2010-08322

DECISION & ORDER

In the Matter of American Transit Insurance
Company, respondent, v Thomas Tagliaferro,
appellant.

(Index No. 24987/09)

Krenstel & Guzman, LLP, New York, N.Y. (Adam J. Roth and Anthony Hirschberger
of counsel), for appellant.

Richard Reinstein, P.C. (Marjorie E. Bornes, 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, Thomas Tagliaferro appeals from an order of the Supreme Court,
Kings County (Archer, J.H.O.), dated August 2, 2010, which, after a framed-issue hearing, granted
the petition and stayed arbitration.

ORDERED that the order is affirmed, with costs.

Contrary to the appellant's contention, upon consideration of all of the evidence (*see*
Bolton v Express, 79 AD3d 779, 780; *Gibson, Dunn & Crutcher v Global Nuclear Servs. & Supply*,
280 AD2d 360, 361; *National Bank of N. Am. v Systems Home Improvement*, 69 AD2d 557, 562,
aff'd 50 NY2d 814), there was ample proof to sustain the petitioner's prima facie burden establishing
that no accident occurred.

Under the circumstances presented, the Supreme Court did not improvidently exercise

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its discretion in refusing the appellant's request to allow a previously undisclosed witness to testify at the hearing (*see generally Parlante v Cavallero*, 73 AD3d 1001, 1003; *Laurin Mar. AB v Imperial Chem. Indus.*, 301 AD2d 367, 368).

In view of the foregoing, we need not reach the petitioner's remaining contention.

PRUDENTI, P.J., ANGIOLILLO, DICKERSON and ROMAN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court