

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**474**

**CA 16-01398**

PRESENT: WHALEN, P.J., LINDLEY, DEJOSEPH, NEMOYER, AND CURRAN, JJ.

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IN THE MATTER OF ARBITRATION BETWEEN LIBERTY  
MUTUAL INSURANCE COMPANY, PETITIONER-APPELLANT,

AND

MEMORANDUM AND ORDER

MIA KADAH, RESPONDENT-RESPONDENT.  
(APPEAL NO. 1.)

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LAW OFFICES OF DESTIN C. SANTACROSE, BUFFALO (LISA M. DIAZ-ORDAZ OF  
COUNSEL), FOR PETITIONER-APPELLANT.

WILLIAM MATTAR, P.C., WILLIAMSVILLE (MATTHEW J. KAISER OF COUNSEL),  
FOR RESPONDENT-RESPONDENT.

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Appeal from an order of the Supreme Court, Onondaga County  
(Walter W. Hafner, Jr., A.J.), entered January 8, 2016. The order  
denied the petition for a stay of arbitration.

It is hereby ORDERED that the order so appealed from is  
unanimously modified on the law by reinstating the petition insofar as  
it seeks a temporary stay of arbitration, and as modified the order is  
affirmed without costs, and the matter is remitted to Supreme Court,  
Onondaga County, for further proceedings in accordance with the  
following memorandum: In this dispute over supplemental uninsured  
motorist (SUM) coverage, petitioner filed a petition seeking a  
permanent stay of arbitration on the ground that it had no  
responsibility to provide SUM coverage because the underlying  
insurance policies had not been exhausted. In the alternative,  
petitioner sought a temporary stay of arbitration to allow for  
discovery. Respondent opposed the petition. Supreme Court determined  
that petitioner failed to establish any ground for a stay of  
arbitration and therefore denied the petition. The court did not  
explicitly address petitioner's alternative request for a temporary  
stay. Thereafter, petitioner moved for leave to renew and/or reargue  
its petition.

In appeal No. 1, petitioner appeals from the order denying its  
petition for a stay of arbitration. In appeal No. 2, petitioner  
appeals from an order denying its motion for leave to renew and/or  
reargue its petition.

In light of this Court's recent decision in *Kadah v Byrd* (148  
AD3d 1811, 1812-1814), the ground for that part of petitioner's motion  
seeking leave to renew no longer exists, and thus the corresponding

part of appeal No. 2 is dismissed on the ground of mootness (see generally *Matter of Curry v Vertex Restoration Corp.*, 252 AD3d 360, 360). Furthermore, no appeal lies from an order denying a motion seeking leave to reargue, and thus that part of petitioner's appeal must also be dismissed (see *Empire Ins. Co. v Food City*, 167 AD3d 983, 984). Appeal No. 2 is therefore dismissed in its entirety.

We agree with the court that petitioner is not entitled to a permanent stay of arbitration. It is unclear from the court's decision, however, whether it considered and denied petitioner's alternative request for a temporary stay of arbitration pursuant to the subject policy's conditions precedent to arbitration, or whether it left the request for a temporary stay pending and undecided. According to petitioner, it is entitled to the fulfillment of the conditions precedent, including respondent's submission to an IME and the disclosure of medical records. We note that at oral argument, respondent's counsel was amenable to conducting some discovery prior to arbitration. We therefore modify the order by reinstating the petition insofar as it seeks a temporary stay of arbitration, and we remit the matter to Supreme Court for a determination whether petitioner is entitled to a temporary stay based on the conditions precedent.