

Short Form Order and Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JAIME A. RIOS  
Justice

IA PART 8

\_\_\_\_\_  
X  
NEW JERSEY RE-INSURANCE COMPANY,

Index  
Number 3096/04

Petitioner,

Motion  
Date June 16, 2004

\_\_\_\_\_ - against -

EDUARDO INTRIAGO,

Motion  
Cal. Number 22

Respondent.

\_\_\_\_\_  
X

The following papers numbered 1 to 8 were read on this petition by the petitioner, pursuant to CPLR article 75 and CPLR 3102[c], to temporarily stay the arbitration demanded by the respondent, until the respondent provides certain discovery.

	<u>Papers Numbered</u>
Notice of Petition - Affidavits - Exhibits .....	1-4
Answering Affidavits - Exhibits .....	5-6
Reply Affidavits .....	7-8

Upon the foregoing papers it is ordered that the petition is determined as follows:

On October 1, 1999, a vehicle owned and operated by Javier Garcia (Garcia) was allegedly involved in an accident with a vehicle owned by Angel Lopez (Lopez). At the time, the respondent Eduardo Intriago (Intriago) was a passenger in the Garcia vehicle, which was insured by the petitioner New Jersey Re-Insurance Company (NJ-Re).

NJ-Re was notified of the accident in 2000, and conducted a preliminary investigation to determine whether there was a viable potential uninsured motorist (UM) claim. On October 10, 2000, a member of NJ-Re's Claims Department confirmed that on the date of the accident the Lopez vehicle was insured by New York Central Mutual Fire Insurance Company (NY Central), and that NY Central received timely notice of the accident.

NJ-Re asserts that in good faith it relied on that information, and believed that no UM claim existed or would be pursued. As a result, it closed its file without obtaining any discovery from Intriago.

At some point, Intriago commenced a personal injury action in this court against Lopez, who defaulted in appearing. Thereafter, Intriago served a motion for a default judgment on NY Central. By letter dated August 18, 2003, NY Central advised Lopez that it had received the notice of default motion on August 8, 2003, and it would neither defend nor indemnify Lopez due to his failure to cooperate and promptly send notices or legal papers relating to the accident or loss. That letter was copied to Intriago and his attorney.

By demand dated November 10, 2003 which was received by NJ-Re on November 18, 2003, Intriago sought arbitration of his UM claim. By letter dated January 28, 2004, NJ-Re, through its attorney, requested that Intriago provide certain discovery, noting that it only learned that NY Central denied coverage when it received the demand for arbitration.

By petition dated February 9, 2004 and filed on February 10, 2004, NJ-Re commenced this proceeding asserting that the arbitration should be temporarily stayed pending Intriago's provision of the requested discovery. In support, it urges that it is a foreign insurer that does not do business in New York, it was unfamiliar with the laws of New York and, in view of NY Central's prior confirmation of coverage, it had a good faith basis for failing to previously seek discovery.

Intriago opposes the petition asserting that it is untimely, and that NJ-Re had more than three years to obtain the discovery prior to his demand for arbitration.

Pursuant to CPLR 7503[c], an application to stay arbitration must be made within 20 days after service of the demand for arbitration (see Matter of Allstate Ins. Co. v Miles, 280 AD2d 472 [2001]). As it is undisputed that NJ-Re received the demand for arbitration on November 18, 2003 and applied for a temporary stay more than 20 days after service of that demand, the petition is untimely and must be denied (see Matter of Allstate Ins. Co. v Miles, supra).

In any event, the record indicates that NJ-Re had three years prior to the commencement of this proceeding within which to seek discovery of Intriago as provided by its insurance policy, and unjustifiably failed to utilize that opportunity (see Matter of

N.Y. Cent. Mut. Fire Ins. Co. v Gershovich, 1 AD3d 364 [2004]; Matter of Interboro Mut. Indem. Ins. Co. v Pardon, 270 AD2d 266 [2000]; Matter of Liberty Mut. Ins. Co. v Almeida, 266 AD2d 547 [1999]; Matter of Allstate Ins. Co. v Faulk, 250 AD2d 674 [1998]).

As a result, even assuming that this proceeding was timely commenced, NJ-Re would not be entitled to a temporary stay of arbitration pending the provision of such discovery by Intriago ( see Matter of N.Y. Cent. Mut. Fire Ins. Co. v Gershovich, supra; Matter of Allstate Ins. Co. v Faulk, supra).

Finally, to the extent that NJ-Re seeks discovery to aid in arbitration pursuant to CPLR 3102[c], it has failed to allege, let alone demonstrate, the existence of "extraordinary circumstances" (cf. Matter of Lancer Ins. Co. v Berman, 289 AD2d 333 [2001]; Matter of State Farm Mut. Auto. Ins. Co. v Wernick, 90 AD2d 519 [1982]).

Accordingly, it is ORDERED and ADJUDGED that the petition is denied, and the proceeding is dismissed.

Dated: December 6, 2004

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J.S.C.