

County-Wide Ins. Co. v Gellerstein

2007 NY Slip Op 33910(U)

November 28, 2007

Supreme Court, New York County

Docket Number: 0109902/2007

Judge: Judith J. Gische

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: GISCHE PART 10
Justice

COUNTRY-WIDE INSURANCE
- v -
Company
IRVING GELBERSTEIN

INDEX NO. 109902/07
MOTION DATE _____
MOTION SEQ. NO. 001
MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	_____
Answering Affidavits — Exhibits _____	_____
Replying Affidavits _____	_____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

motion (s) and cross-motion(s) decided in accordance with the annexed decision/order of even date.

FILED
DEC 04 2007
NEW YORK
COUNTY CLERK'S OFFICE

Dated: 11/28/07

JUDITH J. GISCHE, J.S.C.
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Supreme Court of the State of New York
County of New York: Part 10

County-Wide Insurance Company

Petitioner,

Decision/Order
Index#109902/2007
Mot. Seq. # 001

-against-

Irving Gellerstein

Respondent,

-and-

The American Arbitration Association

Co-respondent.

Pursuant to CPLR 2219(a) the court considered the following numbered papers on this motion:

PAPERS	NUMBERED
OSC, verified petition, affirm. of GT, exhibits.....	1
AL affirmation in Opposition, exhibits, answer to petition, IG affd.....	2

Hon. Gische, J.:

Upon the foregoing papers the decision and order of the court is as follows:

Petitioner seeks an order pursuant to CPLR 7503 (3) permanently staying the no-fault arbitration demanded by respondent, Irving Gellerstein, with respect to a motor vehicle accident that occurred on July 10, 1993. Petitioner claims that the arbitration is barred by both the applicable statute of limitations and the doctrine of laches. Petitioner also seeks sanctions pursuant to 22 NYCRR §130-1.1. Respondent Gellerstein opposes the petition.

Respondent Gellerstein claims that he was involved in a motor vehicle accident on July 10, 1993. At that time petitioner was Mr. Gellerstein insurance carrier and it provided, among other things, no-fault insurance benefits. Mr. Gellerstein filed a claim with petitioner. Although parts of the claim were paid, other parts were declined, including claims for certain medical expenses and lost wages. In 1995 Mr. Gellerstein sought

arbitration before respondent American Arbitration Association ("AAA") to the extent petition denied no-fault benefits. Respondent Gellerstein then brought an Order to Show Cause before the New York State Supreme Court seeking permission to withdraw his 1995 arbitration without prejudice. That relief was granted and no arbitration proceeded.

Mr. Gellerstein did not seek to renew his claim for arbitration until almost nine years later, when on September 27, 2004 he filed a demand with the AAA. The September 27, 2004 demand for arbitration was thereafter withdrawn by Mr. Gellerstein. On April 10, 2007 Mr. Gellerstein refiled his demand for arbitration for a third time. On May 30, 2007, however, the AAA "administratively closed" the arbitration. On June 29, 2007 Mr. Gellerstein filed this fourth request for arbitration. Petitioner now seeks to have arbitration on this matter permanently stayed.

The petition to permanently stay arbitration is granted because the underlying claims are barred by the applicable statute of limitations. Arbitration of a claim is barred if the claim would have otherwise been time barred had it been brought in a court of law. CPLR § 7502(b). The time for commencing an action for a denied claim for unpaid no-fault benefits is six years. CPLR §213(2). Mandarino v. Travelers Property Casualty Ins. Co., 37 AD3d 775 (2nd dept. 2007). Even assuming that the claim accrued at the latest, in 1995, when the first arbitration demand was made, this new request for arbitration was not made until almost twelve years later. It is well outside the applicable limitations period.

The court rejects Gellerstein's argument that 1995 Supreme Court order allowing him to withdraw his arbitration and renew it at a later time in any way preserved that earlier filing date for statute of limitations purposes. The fact that the initial claim was withdrawn carried with it a requirement that a new claim be refiled with the AAA at a later time. There

* 4]
was no reservation of the right to relate back to the 1995 filing date for statute of limitations purposes. Nor is the court persuaded by any suggestion that Mr. Gellerstein's failure to refile the claim earlier was due to administrative problems with the AAA. By his own opposition to this petition, Mr. Gellerstein admits that he did not contact the AAA until June 5, 2003 at the earliest, which date was already outside the applicable statute of limitations.

The court, however, denies the application for sanctions pursuant to part 130. 22 NYCRR § 130-1.1 permits the court, within its discretion, to award sanctions for frivolous conduct. The frivolous conduct, however, must take place within the context of a pending civil action. Here the behavior that petitioner seeks to have the court penalize, is the filing of claims before the AAA. This conduct occurred before the instant proceeding was commenced in court and cannot serve as a basis for sanctionable conduct during the course of a civil proceeding. Even if it could, the court as a matter of discretion denies sanctions in any event.

In accordance herewith it is hereby:

ORDERED that the petition is granted to the extent that any arbitration performed by petitioner's denial of no fault benefits to respondent Gellerstein in connection with a car accident that occurred on July 10, 1993 is permanently stayed, and it is further

ORDERED that the request for sanctions is denied, and it is further

ORDERED that any requested relief not expressly granted herein is denied and that this shall constitute the decision and order of the court.

Dated: New York, New York
November 28, 2007

SO ORDERED

J.G. J.S.C.

FILED
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NEW YORK
COUNTY CLERK'S OFFICE