

**Venetian v Prudential Ins. Co. of Am.**

2010 NY Slip Op 32369(U)

August 26, 2010

Supreme Court, New York County

Docket Number: 106107/08

Judge: Doris Ling-Cohan

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

PRESENT: **JUSTICE DORIS LING-COHAN**

PART 36

Justice

*Venetian*

INDEX NO. 106107/08

- v -

*Prudential Ins et al.*

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 002

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for default judgment

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

1, 2

5

6

Cross-Motion:  Yes  No

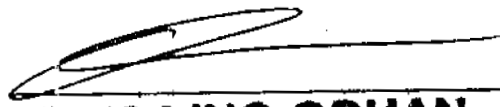
3, 4

Upon the foregoing papers, it is ordered that this motion *by plaintiff for a default judgment is granted, & the cross-motion by defendant Prudential Ins. Co. of America denied, in accordance with the attached memorandum decision, order and judgment*

**UNFILED JUDGMENT**

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 8/26/10

  
JUSTICE DORIS LING-COHAN J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/JUDG.

SETTLE ORDER /JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 36

-----X  
CHERYL ANN VENETIAN,

Plaintiff,

-against-

THE PRUDENTIAL INSURANCE COMPANY  
OF AMERICA, ABDUL R. CHAUDHRY, as Parent  
and Natural Guardian of Rahman A. Chaundry and  
Shereen I. Chaundry, Both Infants Under the Age of 18,

Defendants.

Index No. 106107/08

Motion Seq. No. 002

ORDER/JUDGMENT

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DORIS LING-COHAN, J.:

Plaintiff Cheryl Ann Venetian moves for an order: (1) granting a default judgment against defendant Abdul R. Chaundry ("Chaundry"), as parent and natural guardian of Rahman A. Chaundry and Shereen I. Chaundry, both infants under the age of 18, pursuant to CPLR 3215; and (2) directing defendant The Prudential Insurance Company of America ("Prudential") pay plaintiff her one-third share of the \$1 million death benefit from a life insurance policy issued on the life of her mother, Denise Chaundry, now deceased, plus pre-judgment interest from January 28, 1999. Prudential cross-moves for an order: (1) permitting it to deposit the death benefit proceeds into the Court, pursuant to CPLR 1006(g); (2) fully discharging Prudential from any liability, pursuant to CPLR 1006(f); (3) dismissing Prudential from the action with prejudice; and (4) reimbursing Prudential for attorneys' fees and costs.

This is a declaratory judgment action to recover life insurance proceeds. In December 1998, plaintiff's mother, Denise Chaundry, obtained a \$1 million life insurance policy from Prudential (the "Policy"). Plaintiff alleges that her mother's intention was to list all three of her children, plaintiff, Rahman Chaundry and Shereen Chaundry, as equal beneficiaries of the Policy.

However, plaintiff alleges that, prior to the Policy being issued, defendant Chaundry, plaintiff's mother's husband, altered the beneficiary designation and removed plaintiff from the list of beneficiaries. On January 28, 1999, Denise Chaundry was killed while visiting Pakistan with defendant Chaundry.

On May 1, 2008, plaintiff commenced this action to recover her alleged one-third share of the life insurance benefits under the Policy and served both defendants. While Prudential served an answer on January 15, 2009, to date, defendant Chaundry has not answered and has defaulted on this motion for the entry of a default judgment against him.<sup>1</sup>

Upon review of the submissions, and the history of this case, plaintiff's motion for a default judgment is granted. Plaintiff's uncontested submissions<sup>2</sup> which consist of, *inter alia*, an affidavit by plaintiff Cheryl Venetian, as well as an affidavit by Alisa Barrett Steinberg ("Steinberg"), a close friend of Denise Chaundry, in which they maintain that in 1998, Denise Chaundry, prior to her trip to Pakistan, purchased a life insurance policy, naming each of her three children, as equal beneficiaries. According to Steinberg, Denise Chaundry actually showed her the beneficiary designation, which listed each of Denise Chaundry's children, in the order of their birth and "Denise specifically told [her] that if something happened...ALL of her children were named in her life insurance policy and [Denise] wanted all of her children to share equally in the policy proceeds". [¶9, Steinberg Affidavit, attached to Notice of Motion]. Steinberg

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<sup>1</sup> By order of this court dated October 19, 2009, which was also issued upon default of defendant Chaundry, this court extended plaintiff's time to serve such defendant, and denied, without prejudice, the portion of plaintiff's motion which sought a default judgment, as well as defendant Prudential's cross-motion which sought the same relief as sought herein.

<sup>2</sup> While defendant Prudential has submitted an affirmation in opposition, such affidavit does not dispute the veracity of plaintiff's proof, but rather, merely asserts that as a "stakeholder and disinterested party [it] cannot determine factually or legally who is entitled to the Death Benefit". [¶5, Affirmation in Opposition].

further maintains that the signature on the application for the life insurance for Denise Chaudhry, naming only Rahman and Shereen Chaudhry as beneficiaries, which she located after Denise Chaudhry's death, appears to be a forgery and that the beneficiary designation she found was not the one showed to her by Denise Chaudhry, prior to her death. [¶¶12-14, Steinberg Affidavit, attached to Notice of Motion]. It is alleged by plaintiff that defendant Chaudhry changed the beneficiary designation by removing plaintiff's name, without the consent of plaintiff's mother Denise Chaudhry. [¶11, Venetian Affidavit, attached to Notice of Motion]. As the above allegations are uncontested, plaintiff is entitled to the relief demanded in the complaint, to the extent detailed below.

While defendant Prudential cross-moves for an order: (1) permitting it to deposit the death benefit proceeds into the Court, pursuant to CPLR 1006(g); (2) fully discharging Prudential from any liability, pursuant to CPLR 1006(f); (3) dismissing Prudential from the action with prejudice; and (4) reimbursing Prudential for attorneys' fees and costs, this court is constrained to deny such cross-motion, as the cross-moving papers were not served upon defendant Abdul R. Chaundry ("Chaundry"), as parent and natural guardian of Rahman A. Chaundry and Shereen I. Chaundry, both infants under the age of 18, the affidavit of service of the cross-moving papers, only indicates that it was served upon plaintiff. Thus, the court is constrained to deny the cross-motion.<sup>3</sup> However, as it is undisputed that the balance of the policy should be distributed to the remaining beneficiaries, Rahman and Shereen Chaudhry, but given that defendant Chaudhry has

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<sup>3</sup> The court notes that, according to counsel for defendant Prudential, on or about May 18, 2004, defendant Chaudhry, the father of the infant beneficiaries, submitted a claim for the death benefit on behalf of his children Rahman and Shereen Chaudhry, however, defendant Chaudhry failed to supply the additional documentation sought by Prudential, including proof of guardianship papers for the minor children; according to counsel for Prudential, numerous requests were made for the required additional information.

[\* 5]

defaulted in this case, the remaining beneficiaries' two-thirds interest (in the amount of \$666,666.67) shall be deposited into court pursuant to CPLR 1006(g), to be released to such beneficiaries equally, upon each obtaining the age of majority, as provided below.<sup>4</sup>

Accordingly, it is

ORDERED that plaintiff's motion is for a default judgment is granted as to defendant Abdul R. Chaundry, as parent and natural guardian of Rahman A. Chaundry and Shereen I. Chaundry, both infants under the age of 18; it is further

ADJUDGED AND DECLARED that the beneficiaries under the life insurance policy with policy number 69 005 437 issued by The Prudential Insurance Company of America are Cheryl Venetian, Rahman A. Chaudhry and Shereen I. Chaudhry, on an equal basis; it is further

ADJUDGED AND DECLARED that defendant The Prudential Insurance Company of America, is obligated under its policy of life insurance with policy number 69 005 437 to pay to Cheryl Venetian, Rahman A. Chaudhry and Shereen I. Chaudhry equal amounts as primary beneficiaries of the life insurance policy with policy number 69 005 437, upon the life of Denise Chaudhry, deceased; it is further

ORDERED that pursuant to such life insurance policy, within 60 days of entry of this order, defendant The Prudential Insurance Company of America shall pay to plaintiff Cheryl Venetian the amount of \$333,333.33, representing her one-third share in the subject life insurance policy; it is further

ORDERED that defendant Prudential's cross motion is denied for failure to serve; and it is further

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<sup>4</sup> Alternatively, upon proof of guardianship and a hearing by this court, on notice to plaintiff, such funds may be released to the guardian, to be held in trust until each child beneficiary reaches the age of majority.

ORDERED that within 60 days of entry of this order, defendant Prudential shall deposit into court the balance of the above life insurance policy in the sum of \$666,666.67, pursuant to CPLR 1006(g), to be released to the beneficiaries Rahman A. Chaudhry and Shereen I. Chaudhry equally, upon application to the court, having reached the age of majority, with appropriate proof of identity and age;<sup>5</sup>

ORDERED that within 30 days of entry of this order, plaintiff shall serve a copy of this order with notice of entry upon all parties, as well as all beneficiaries under the policy, by regular mail, at their last known address.

This constitutes the decision, order and judgment of the court.

Dated: 8/26/10

  
Doris Ling-Cohan, J.S.C.

J:\Default Judgments\Venetian.Prudential.wpd

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<sup>5</sup> Alternatively, upon proof of guardianship and a hearing by this court, on notice to plaintiff, such funds may be released to the guardian, to be held in trust until each child beneficiary reaches the age of majority.