

Matter of Government Empls. Ins. Co. v Khan

2011 NY Slip Op 33763(U)

May 5, 2011

Supreme Court, New York County

Docket Number: 101269/2011

Judge: Barbara Jaffe

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

PRESENT: JAFFE BARBARA JAFFE J.S.C.

PART 5

Index Number : 101269/2011
GEICO
vs.
KHAN, ZAMEERY Y.
SEQUENCE NUMBER : 001
COMPEL OR STAY ARBITRATION
CAL # 47

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

his motion to/for stay arbitration

PAPERS NUMBERED
1

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

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

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: 5/5/11
MAY 05 2011

[Signature]
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 : PART 5

-----X
 In the Matter of the Application of GOVERNMENT
 EMPLOYEES INSURANCE COMPANY to stay
 Arbitration,

Index No. 101269/11

Motion Date: 3/10/11

Motion Seq. No.: 001

Petitioner,

-against

DECISION & JUDGMENT

ZAMEER Y. KHAN,

Respondent,

BIENVENIDA RODRIGUEZ and RESPONSE
 INSURANCE COMPANY,

Proposed Additional Respondents.

-----X
 BARBARA JAFFE, JSC:

For petitioner:

Leopold Raic, Esq.
 Law Office of Gail S. Lauzon
 170 Froehlich Farm Blvd.
 Woodbury, NY 11797
 516-714-7295

By notice of petition and verified petition dated January 31, 2011, petitioner moves for an order permanently staying arbitration or, in the alternative, temporarily staying arbitration, joining the proposed additional respondents, and ordering respondent Khan to appear for an examination under oath and physical examination and to provide medical authorizations.

On November 15, 2009, respondent's motor vehicle, which was insured by petitioner, was allegedly involved in an accident with proposed respondent Rodriguez's vehicle. (Petition, dated Jan. 31, 2011, Exh. B). The police accident report contains Rodriguez's insurance policy

number, along with a policy expiration date of May 19, 2010, and reflects that Rodriguez's vehicle had a Florida license plate. (*Id.*). On or about January 14, 2010, petitioner was notified that a search of Florida's Department of Motor Vehicles (DMV) database indicated that Rodriguez's vehicle was insured by Response Auto Insurance Company between May 2009 and May 2010. (*Id.*, Exh. C).

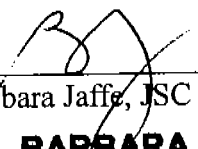
Petitioner contends that it has established that Rodriguez's vehicle was insured on the date of the accident, and that absent any evidence to the contrary, the arbitration must be stayed permanently.

"In a proceeding to stay arbitration of a claim for uninsured motorist benefits, the claimants' insurer has the initial burden of proving that the offending vehicle was insured at the time of the accident, and thereafter the burden is on the party opposing the stay to rebut that *prima facie* showing." (*Matter of Lumbermens Mut. Cas. Co. v Quintero*, 305 AD2d 684 [2d Dept 2003], *lv denied* 100 NY2d 515 [2003]).

Here, as the police report and DMV search reflect that Rodriguez's vehicle was insured at the time she collided with respondent's vehicle, petitioner has established, *prima facie*, that Rodriguez was insured, thus entitling it to a permanent stay of arbitration. (*See Matter of Am. Intern. Ins. Co. v Giovanelli*, 72 AD3d 948 [2d Dept 2010] [petitioner made *prima facie* showing that vehicle was insured through police report containing vehicle's insurance policy number]; *Matter of Eagle Ins. Co. v Rodriguez*, 15 AD3d 399 [2d Dept 2005] [petition to permanently stay arbitration should have been granted as petitioner established *prima facie* that offending vehicle was insured by submitting police report containing vehicle's insurance code]). Absent any evidence rebutting petitioner's *prima facie* showing, it is hereby

ADJUDGED and ORDERED, that the petition is granted and respondent is permanently stayed from proceeding to arbitration in this matter.

ENTER:



Barbara Jaffe, JSC
BARBARA JAFFE
J.S.C.

DATED: May 5, 2011
New York, New York

MAY 05 2011

UNFILED JUDGMENT

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