

**Matter of First Acceptance Ins. Co., Inc. v Woodhull
Med. Care, P.C.**

2012 NY Slip Op 33386(U)

March 23, 2012

Supreme Court, New York County

Docket Number: 650301/2012

Judge: Shirley Werner Kornreich

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: JUSTICE SHIRLEY WERNER KORNREICH
Justice

PART 54

Index Number : 650301/2012
FIRST ACCEPTANCE INSURANCE
vs.
WOODHULL MEDICAL CARE, P.C.
SEQUENCE NUMBER : 001
COMPEL OR STAY ARBITRATION

INDEX NO.
MOTION DATE 2/29/12
MOTION SEQ. NO.

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits No(s) 1-5
Answering Affidavits — Exhibits No(s) None-No App
Replying Affidavits No(s)

Upon the foregoing papers, it is ordered that this motion is

MOTION IS DECIDED IN ACCORDANCE
WITH ACCOMPANYING MEMORANDUM
DECISION AND ORDER.

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

Dated: 3/23/12

JUSTICE SHIRLEY WERNER KORNREICH, J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: PART 54

-----X
In the Matter of the Application for an Order Staying
Arbitration between FIRST ACCEPTANCE
INSURANCE COMPANY, INC.,

Index No.: 650301/2012

Petitioner,

-against-

DECISION & ORDER

WOODHULL MEDICAL CARE, P.C.,

Respondent.

-----X
KORNREICH, SHIRLEY WERNER, J.:

This is an action brought by petitioner First Acceptance Insurance Company, Inc. (First Acceptance) to stay an arbitration demanded by respondent Woodhull Medical Care, P.C. (Woodhull). The following facts are drawn from the affidavit of Tracy McCoy, a vice president at First Acceptance. Though it has been served with notice of this proceeding, respondent has not offered any opposition to this application.

First Acceptance is a Texas corporation with its principal place of business in Nashville, Tennessee. It is in the business of writing personal automobile insurance policies. It does not write commercial vehicle insurance policies, nor does it insure bus companies. It is not authorized to issue insurance policies in New York, and it does not transact business of any kind in the State of New York, let alone issue automobile insurance to New York residents.

Woodhull appears to be the assignee of claims of non-party Elizabeth Melendez against non-party Manny's Bus Service (Manny's) which arose from injuries she suffered when a Manny's bus she was riding was involved in a collision. The collision appears to have occurred in New York.

On January 11, 2012, First Acceptance received at its mailing address in Tennessee a New

York Motor Vehicle No-Fault Insurance Law Arbitration Request Form. The letter identified the injured person as "ELIZABETH MELENDEZ," the health provider as "WOODHULL MEDICAL CARE, P.C.," the policyholder as "MANNYS BUS SERVICE," the policy number as "PA00201022," and the Insurer as "ACCEPTANCE INSURANCE CO. C/O NETWORK ADJUSTERS." Ms. McCoy attests that First Acceptance's records do not show that it ever issued a policy to Manny's or Melendez, or that it ever issued a policy under the identification number PA00201022. She further attests that First Acceptance has no affiliation with any companies operating under the names Acceptance Insurance Company or Network Adjusters.

CPLR § 7503(b) provides that:

Subject to the provisions of subdivision (c), a party who has not participated in the arbitration and who has not made or been served with an application to compel arbitration, may apply to stay arbitration on the ground that a valid agreement was not made or has not been complied with or that the claim sought to be arbitrated is barred by limitation under subdivision (b) of section 7502.

An "agreement to arbitrate must be express, direct, and unequivocal as to the issues or disputes to be submitted to arbitration." *Gangel v DeGroot*, 41 NY2d 840 (1977). In light of the uncontradicted evidence submitted by First Acceptance, there is no basis to believe that there was an express agreement to submit a dispute between the parties to arbitration. Indeed, it seems likely that there was no agreement about anything whatsoever between First Acceptance and either respondent Woodhull or Melendez or Manny's. Accordingly, it is hereby

ORDERED that the arbitration between the parties hereto ^{permanently} is stayed, ^{on default}.

Dated: 3/23/12
New York, NY

Enter: [Signature]
S.C.