

American Commerce Ins. Co. v Sanford

2014 NY Slip Op 31108(U)

April 25, 2014

Supreme Court, New York County

Docket Number: 157793/2012

Judge: Anil C. Singh

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

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AMERICAN COMMERCE INSURANCE COMPANY,

Plaintiff,

-against-

DECISION AND
ORDER

Index No. 157793/2012

Mot. Seq. 001

GABRIEL SANFORD,
ACTIVE CARE MEDICAL SUPPLY CORP.,
ARJO CHIROPRACTIC PLLC,
AXIAL CHIROPRACTIC PC,
BLUE BELL ACUPUNCTURE PC,
DISTINCTIVE MEDICAL PC,
FYZ ACUPUNCTURE PC,
GERARD AVENUE MEDICAL PC,
GOTHAM MEDICAL PC,
GS PHYSICAL THERAPY OFFICE PC,
IMMEDIATE IMAGING PC,
JAMAICA HOSPITAL,
METRO PSYCHOLOGICAL SERVICES PC,
OMEGA 18 INC.,
JOHN PALEMIRE, DC,
POWER CHIROPRACTIC PC,
RENPIER CENTRAL MEDICAL PC,
RICHAMOND HILL ACUPUNCTURE PLLC,
ROYAL MASSAGE THERAPY PC,
UTICA CHIROPRACTIC PC,
UTICA COMPREHENSIVE MEDICAL PC,
V&L OCCUPATIONAL & PHYSICAL THERAPY PLLC,
and WU XING ACUPUNCTURE PC,

Defendants.

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HON. ANIL C. SINGH, J.:

Plaintiff in this action for no-fault automobile insurance benefits moves for leave to enter a default judgment against GABRIEL SANFORD, ACTIVE CARE MEDICAL SUPPLY CORP., ARJO CHIROPRACTIC PLLC, AXIAL CHIROPRACTIC PC, BLUE BELL ACUPUNCTURE PC, DISTINCTIVE MEDICAL PC, FYZ ACUPUNCTURE PC, GERARD AVENUE MEDICAL PC, GOTHAM MEDICAL PC, GS PHYSICAL THERAPY OFFICE PC, IMMEDIATE IMAGING PC,

JAMAICA HOSPITAL, METRO PSYCHOLOGICAL SERVICES PC, OMEGA 18 INC., JOHN PALEMIRE, DC, POWER CHIROPRACTIC PC, RENPIER CENTRAL MEDICAL PC, RICHAMOND HILL ACUPUNCTURE PLLC, ROYAL MASSAGE THERAPY PC, UTICA CHIROPRACTIC PC, UTICA COMPREHENSIVE MEDICAL PC, V&L OCCUPATIONAL & PHYSICAL THERAPY PLLC, and WU XING ACUPUNCTURE PC pursuant to CPLR § 3215, contending that defendant GABRIEL SANFORD failed to attend scheduled EUOs and IMEs. There is no opposition.

Insurance regulation 68 requires an eligible injured person to submit to EUOs and IMEs as may reasonably be required by the insurer. Pursuant to New York Insurance Regulation 68, no action shall lie against the insurance company unless there has been full compliance with the terms of coverage.

Charles Rorke (“Rorke”) states in a sworn affidavit that he is a Special Investigation Unit (“SIUI”) investigator, employed by the plaintiff, assigned to the file at issue. He states that he attempted to schedule a recorded statement of GABRIEL SANFORD for April 19, 2012, May 23, 2012, June 6, 2012, June 19, 2012, and July 3, 2012. Rorke further states that GABRIEL SANFORD failed to appear for any of the scheduled EUOs.

Steven Tufaro (“Tufaro”) states in a sworn affidavit that he is a manager of Reliant Evaluations, Inc. (“RE”), a third-party vendor retained by plaintiff to schedule IMEs. Tufaro states that IMEs of GABRIEL SANFORD were scheduled for May 3, 2012, May 10, 2012, May 24, 2012, May 29, 2012, July 13, 2012, and July 5, 2012. Tufaro states that GABRIEL SANFORD failed to appear at any of the scheduled IMEs. GABRIEL SANFORD’S failure to appear at any of the scheduled IMEs is corroborated by the sworn affidavits of Dr. Bonnie Corey, Dr. Lisa Nason, Dr. Francisco Santiago, and Dr. Frank Oliveto.

Vincent F. Gerbino, Esq. (“Gerbino”) states in a sworn affidavit that he is a member of Bruno, Gerbino & Soriano, LLP, attorneys for the plaintiff and is the partner supervising this matter. Gerbino states that EUOs were scheduled for May 23, 2013, June 6, 2012, June 19, 2012, and July 3, 2012.

Gerbino states that GABRIEL SANFORD failed to appear for any of the scheduled EUOs.

After careful consideration, the Court finds that plaintiff has made out a prima facie case in its favor based upon the sworn affidavits of Charles Rorke, Steven Tufaro, Vincent F. Gerbino, Esq., Dr. Bonnie Corey, Dr. Lisa Nason, Dr. Francisco Santiago, and Dr. Frank Oliveto and the affirmation of Lisa M. Aquino, Esq.

Accordingly, it is

ORDERED that plaintiff's motion for default judgment is granted on default against GABRIEL SANFORD, ACTIVE CARE MEDICAL SUPPLY CORP., ARJO CHIROPRACTIC PLLC, AXIAL CHIROPRACTIC PC, BLUE BELL ACUPUNCTURE PC, DISTINCTIVE MEDICAL PC, FYZ ACUPUNCTURE PC, GERARD AVENUE MEDICAL PC, GOTHAM MEDICAL PC, GS PHYSICAL THERAPY OFFICE PC, IMMEDIATE IMAGING PC, JAMAICA HOSPITAL, METRO PSYCHOLOGICAL SERVICES PC, OMEGA 18 INC., JOHN PALEMIRE, DC, POWER CHIROPRACTIC PC, RENPIER CENTRAL MEDICAL PC, RICHAMOND HILL ACUPUNCTURE PLLC, ROYAL MASSAGE THERAPY PC, UTICA CHIROPRACTIC PC, UTICA COMPREHENSIVE MEDICAL PC, V&L OCCUPATIONAL & PHYSICAL THERAPY PLLC, and WU XING ACUPUNCTURE PC; and it is further

ADJUDGED and DECLARED that, for the purpose of claims submitted by GABRIEL SANFORD, ACTIVE CARE MEDICAL SUPPLY CORP., ARJO CHIROPRACTIC PLLC, AXIAL CHIROPRACTIC PC, BLUE BELL ACUPUNCTURE PC, DISTINCTIVE MEDICAL PC, FYZ ACUPUNCTURE PC, GERARD AVENUE MEDICAL PC, GOTHAM MEDICAL PC, GS PHYSICAL THERAPY OFFICE PC, IMMEDIATE IMAGING PC, JAMAICA HOSPITAL, METRO PSYCHOLOGICAL SERVICES PC, OMEGA 18 INC., JOHN PALEMIRE, DC, POWER CHIROPRACTIC PC, RENPIER CENTRAL MEDICAL PC, RICHAMOND HILL ACUPUNCTURE PLLC, ROYAL MASSAGE THERAPY PC, UTICA CHIROPRACTIC PC, UTICA COMPREHENSIVE

MEDICAL PC, V&L OCCUPATIONAL & PHYSICAL THERAPY PLLC, and WU XING ACUPUNCTURE PC, defendant GABRIEL SANFORD is not an eligible injured person entitled to no-fault benefits under AMERICAN COMMERCE INSURANCE COMPANY insurance policy ACPA-000653448, Claim No.: 1126518, and plaintiff is not obligated to pay for claims seeking no-fault benefits for services or goods provided to GABRIEL SANFORD under this claim number; and it is further

ORDERED that any and all pending and future no-fault claims submitted by GABRIEL SANFORD, ACTIVE CARE MEDICAL SUPPLY CORP., ARJO CHIROPRACTIC PLLC, AXIAL CHIROPRACTIC PC, BLUE BELL ACUPUNCTURE PC, DISTINCTIVE MEDICAL PC, FYZ ACUPUNCTURE PC, GERARD AVENUE MEDICAL PC, GOTHAM MEDICAL PC, GS PHYSICAL THERAPY OFFICE PC, IMMEDIATE IMAGING PC, JAMAICA HOSPITAL, METRO PSYCHOLOGICAL SERVICES PC, OMEGA 18 INC., JOHN PALEMIRE, DC, POWER CHIROPRACTIC PC, RENPIER CENTRAL MEDICAL PC, RICHAMOND HILL ACUPUNCTURE PLLC, ROYAL MASSAGE THERAPY PC, UTICA CHIROPRACTIC PC, UTICA COMPREHENSIVE MEDICAL PC, V&L OCCUPATIONAL & PHYSICAL THERAPY PLLC, and WU XING ACUPUNCTURE PC are stayed.

The foregoing constitutes the decision and order of the court.

Date: 4/25/14
New York, New York


Anil C. Singh

**HON. ANIL C. SINGH
SUPREME COURT JUSTICE**