

Matter of American Tr. Ins. Co. v Golden
2016 NY Slip Op 31515(U)
August 9, 2016
Supreme Court, New York County
Docket Number: 652318/2016
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: DEBRA A. JAMES
Justice

PART 59

In the Matter of the Arbitration Attempted
Between AMERICAN TRANSIT INSURANCE COMPANY,

Index No.: 652318/2016

Motion Date: 07/26/2016

Petitioner,

Motion Seq. No.: 001

- v -

DIMITRI GOLDEN,

Respondent.

The following papers, numbered 1 to 2 were read on this petition to stay arbitration.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits _____

Answering Affidavits - Exhibits _____

Replying Affidavit - Exhibits _____

PAPERS NUMBERED

1

2

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers,

Petitioner American Transit Insurance Company (ATIC) seeks to permanently stay an uninsured motorist arbitration demanded by the respondent pursuant to the uninsured motorist (UM) endorsement of an automobile liability insurance policy issued by petitioner. Petitioner alternatively seeks to compel respondent claimant to submit to an examination under oath and produce authorizations for all diagnostic films and medical records.

This proceeding arises out of a motor vehicle accident which

Check One: ☐ **FINAL DISPOSITION** ☒ **NON-FINAL DISPOSITION**

Check if appropriate: ☐ **DO NOT POST**

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

[*2]
respondent claimant Dimitri Golden alleges occurred on February 14, 2015, on the Bowery at or near its intersection with Kenmare Street in New York County. Respondent Golden alleges that on the date of the accident he was a passenger of ATIC-insured vehicle driven by non-party Khalid Amin. There was no police report filed. Respondent provides an unsigned MV104 report allegedly made by respondent identifying the vehicle in which he was a passenger as a medallion #5468 driven by non-party Amin Khalid. The MV 104 provides a description of the alleged accident "veh #2 made a left turn from the wrong lane. veh #1 followed to closely + rear ended. veh # 1 fled scene despite chase by veh #2. veh #2 had no visible seatbelt receptacle."

Petitioner points out that there is no information or description of the other vehicle allegedly involved in the accident. Mr. Amin Khalid filed an MV 104 that denies that he was involved in an accident on February 14, 2015. In support of his position, he also provided a copy of the route sheet. On that basis, petitioner contends that respondent failed to furnish sufficient evidence to support his allegation that there was an accident and that its insured was involved in such accident. Petitioner argues that the court should find that there was no accident and permanently stay the arbitration, or alternatively, temporarily stay the arbitration pending determination of a

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hearing on whether there was an accident in which petitioner's insured was involved.

Respondent in opposition submits a medical record of treatment, including the history he gave of the accident, which was rendered to him on the same day of the accident, as further proof of the accident. However, respondent does not oppose setting the matter down for framed hearing.

The court determines that there are issues of fact as to whether an accident took place in which respondent was a passenger and whether it involved petitioner's insured. These coverage issues are properly resolved at a framed issue hearing. Matter of Iglesias v Allcity Ins. Co., 264 AD2d 580 (1st Dept 1999).

Therefore, based on the foregoing, it is

ORDERED that the petition of AMERICAN INDEPENDENT INSURANCE COMPANY is GRANTED to the extent that the arbitration is temporarily stayed pending the framed issued hearing; and it is further

ORDERED that a framed issue hearing is directed on the issues of (1) whether the respondent was a passenger in a vehicle involved in an accident at the alleged date and time; and (2) whether petitioner's insured Amin Khalid was involved in such accident, and is referred to a Special Referee to hear and report with recommendations, except that, in the event of and upon the

[*4]
filing of a stipulation of the parties, as permitted by CPLR 4317, the Special Referee, or another person designated by the parties to serve as referee, shall determine the aforesaid issues; and it is further

ORDERED that arbitration is temporarily stayed pending receipt of the report and recommendations of the Special Referee and a motion pursuant to CPLR 4403, or receipt of the determination of the Special Referee or the designated referee; and it is further

ORDERED that within 60 days from the date of this order the petitioner shall cause a copy of this order with notice of entry to be served on the Clerk of the Judicial Support Office (Room 311, 60 Centre Street) to arrange a date for the reference to a Special Referee; and it is further

ORDERED that a copy of this order with notice of entry shall be served by petitioner on the attorneys for the respondent; and it is further

ORDERED that the parties are hereby directed to attend a preliminary conference on November 22, 2016 at 9:30 A.M., at the Courthouse, IAS Part 59, Room 331, 60 Centre Street, New York 10007.

This is the decision and order of the court.

Dated: August 9, 2016

ENTER:


DEBRA A. JAMES J.S.C.