

Matter of State Farm Mut. Auto. Ins. Co. v Navas
2018 NY Slip Op 33413(U)
November 28, 2018
Supreme Court, Bronx County
Docket Number: 260548/15
Judge: Howard H. Sherman
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX - PART 4

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In the Matter of the Petition of
**State Farm Mutual Automobile Insurance
Company**

Decision and Order

Index No.: 260548 /15

Petitioner,

For an Order Pursuant to Article 75 of the CPLR
permanently staying the UM Arbitration attempted to
be had by

Emmanuel Navas

Respondent

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The following papers numbered 1 to 3 read on this petition to stay arbitration noticed on July 10, 2015
and duly submitted after a hearing on October 24, 2016

Notice of Petition-Petition and Exhibits [A-C]
Affirmation in Opposition and Exhibits [A-C]
Affirmation in Reply

PAPERS NUMBERED

1
2
3

Upon the foregoing papers, and after a hearing , the application by petitioner
State Farm Mutual Automobile Insurance Company to permanently stay the uninsured
motorist arbitration sought by respondent is granted.

Petitioner, State Farm Mutual Automobile Insurance Company (State Farm)
commenced this CPLR 7503 proceeding to stay an arbitration for uninsured motorist
(UM) benefits demanded by the respondent, Emmanuel Navas (Navas) in connection
with a three- vehicle collision on the grounds that he failed to comply with the 24-hour
reporting requirement of the SUM/UM endorsement of the owner's policy with State
Farm , and on the further grounds of the absence of proof of "physical contact."

It is here undisputed that there was no police accident report generated in connection with the June 15, 2012 collision on the Van Wyck Expressway in Queens County . Respondent Navas was driving a motor vehicle owned by his mother, Iris G. Soto, which was covered under a policy maintained by petitioner.

Navas sought benefits under the “hit and run” provision of the policy, which reflects the language of Insurance Law § 5218 (c) and § 5208 (a) (2) (A) and requires, in pertinent part that (1) neither the owner nor operator of such “hit and run” automobile can be identified, and (2) the insured or someone on his behalf shall have reported the accident within 24 hours or as soon as reasonably possible to a police, peace or judicial officer or to the Commissioner of Motor Vehicles [SUM/UM Endorsement I. (c)(2)(I)].

It is settled that “[w]hen a provision of an insurance policy mirrors statutory language, in this case Insurance Law § 5208 (a), the policy clause is subject to the same interpretation as the statute “ , and “ [c]ase law reveals that the courts have consistently afforded a very liberal interpretation to the notice requirement, accepting police contacts that fall far short of the operator's obtaining a written report (see, *Canty v MVAIC*, 95 AD2d 509, 512; *Matter of Dixon v MVAIC*, 56 AD2d 650, 651, citing *Gordon v MVAIC*, 90 Misc 2d 382 [Rubin, J.]; *Matter of Casanova v MVAIC*, 36 Misc 2d 489).” *Matter of Country Wide Ins. Co. [Russo]*, 201 A.D.2d 368, 370, 607 N.Y.S.2d 648 [1st Dept. 1994]).

Respondent testified that his vehicle was hit in the rear by a “big red old Chevy van” [40] driven by a woman, and his Toyota Matrix was propelled into a vehicle positioned directly in front of his. He was taken by ambulance to New York Hospital, Queens, and he was discharged on the following day . At the time he was removed from the scene , no police had responded, but he was questioned at the hospital by two officers, “and they were asking me what was going on and things like that .” [7:10-12]. They informed him that the “lady left” the accident scene [43:1]. He did not get their names or badge numbers [19-20], nor could he remember whether they gave him any “slip saying this is a police report, this is the number to try and get it .” [20: 9-11]. He never went in person to a police station to report the accident because “every time [he] would call they would tell [him] there was nothing here about that.” [42:4-5].

Navas authenticated photographs of his vehicle taken after the accident, each of which depicted damage to the front of the vehicle. He testified that other photographs from the insurer’s file did not represent accurately the condition of the rear of the vehicle after the accident [32-33]. He was unable to retrieve photographs of the vehicle he took with his phone at the body shop before work was done [24] because he did not know what email address he had used to send them to the law firm[37-38]. He also identified a copy of a MV-104 that he had signed on June 20th in his attorney’s office [11-12], and which he placed in a mailbox in front of his house [13-14].

Upon consideration of the credibility of the above testimony, and the absence of any documentary evidence to support the assertions of a post-accident police interview, or of damage having been sustained to the rear of the Navas vehicle, or of the filing with the Department of Motor Vehicles, and the lack of any corroborative testimony concerning a police interview, or of any contemporaneous attempts made to secure a written report, a task that was in large measure undertaken by respondent's mother and girlfriend, the court finds that petitioner has met its burden on the issues of lack of notification and physical contact.

Accordingly, it is

ORDERED that the application to permanently stay the arbitration sought to be had by Emmanuel Navas in connection with a motor vehicle accident of June 15, 2012, be and hereby is granted.

Submit judgment.

This constitutes the decision and order of this court.

Dated: November 28, 2018


Howard H. Sherman