

Ameriprise Ins. Co. v Krutishinkiy
2019 NY Slip Op 31014(U)
April 11, 2019
Supreme Court, Suffolk County
Docket Number: 2692/16
Judge: Denise F. Molia
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT - STATE OF NEW YORK
IAS PART 39 - SUFFOLK COUNTY**

PRESENT:

Hon. **DENISE F. MOLIA**,
Justice

DECISION AFTER HEARING

AMERIPRISE INSURANCE COMPANY,

Petitioner,

- against -

VITALIY KRUTISHINKIY,

Respondent.

CASE DISPOSED: YES
MOTION R/D : 4/20/16
SUBMISSION DATE: 12/7/18
MOTION SEQUENCE: 001 MD

ATTORNEY FOR PETITIONER
Bruno Gerbino & Soriano, LLP
445 Broadhollow Road, Suite 220
Melville, New York 11747

ATTORNEYS FOR RESPONDENTS
Held & Hines, LLP
2004 Ralph Avenue
Brooklyn, New York 11234

The instant matter came on before the Court for a Framed Issue Hearing to determine whether the respondent/claimant, Vitaliy Krutoshinskiy, was a resident relative of Alla Kane's household on July 20, 2011, the date of loss, and whether he is eligible for uninsured motorist benefits.

The subject demand for arbitration arises from a reported motor vehicle accident that occurred on July 20, 2011. The Police Accident Report states that the vehicle operated by the respondent, Vitaliy Krutoshinskiy, a 2008 Honda bearing license plate number ELG8224, was allegedly "side swiped" on the driver's side by an unknown vehicle. The Report identifies the respondent's address as 3145 Brighton 4th Street, Apartment 618, Brooklyn, New York 11235.

The petitioner was timely served with a Demand for Arbitration, seeking uninsured motorist benefits under Ameriprise Insurance Company ("Ameriprise") Policy Number A101522453, with the respondent's mother, Alla Kane, as the named insured under the policy. The respondent timely moved for a stay of arbitration, contending that the respondent is not eligible to receive first party insurance benefits and UM benefits, as he is not a resident relative of the insured, Alla Kane, and knowingly participated in a scheme to fraudulently procure a

policy of insurance from Ameriprise. The petitioner's contention is based upon the fact that the declaration page of the policy between Ameriprise and Alla Kane designates the policyholder's residence as 3 Harvest Hill Lane, Huntington, New York, which is a different address than the one attributed to the respondent on the Police Accident Report.

The respondent alleges that at the time the subject policy was issued to his mother and during the policy period, he maintained two residences, one of which was his mother's residence in Huntington. Respondent identified his second address, 3145 Brighton 4th Street, Brooklyn, New York, as the residence of his grandparents, with whom he sometimes resided and provided care and assistance.

Ameriprise brought a petition seeking to permanently stay the uninsured motorist arbitration demanded by Vitaliy Krutoshinskiy, or in the alternative, to temporarily stay said arbitration pending the holding of a framed issue hearing to determine whether the respondent was a resident relative of Alla Kane's household at the time of this loss and therefore eligible for uninsured motorist benefits. By Order dated November 14, 2016, the arbitration was temporarily stayed and the matter was set down for framed issue hearing on the issue of respondent's residence.

The first witness called by petitioner was James Glampe, a Special Investigator employed by petitioner, Ameriprise Insurance Company. The witness testified as follows:

Ameriprise Insurance Company ("Ameriprise") is a company that provides automobile and home insurance coverage. As a Special Investigator for Ameriprise, Glampe gathers evidence for claim representatives and makes recommendations as to how a file should proceed. In July 2011, the medical portion of a claim made by respondent Vitaliy Krutishinkiy was referred by the Personal Injury Protection Representative to the Special Investigation Unit. The referral occurred after Krutishinkiy's recorded statement to the petitioner raised suspicions that the respondent actually resided in Brooklyn, New York, and not Huntington, New York, the place where the policy was written.

A review of the subject policy issued by Ameriprise to Daniel Kane and Alla Kane, residents of 3 Harvest Hill Lane, Huntington, New York, revealed coverage of a 2008 Honda Accord. The dates of effective coverage under the policy commenced on February 20, 2011 and terminated on August 20, 2011. The identified drivers were Daniel Kane, Alla Kane, Vitaliy Krutishinkiy, and Yana Kane. It is undisputed that the date of loss of the subject accident was July 20, 2011.

As a result of the respondent's recorded statement, Glampe determined that the respondent actually resided at 3145 Brighton 4th Street, Brooklyn, New York. The witness noted that a public records search revealed that the most current address since November 2009 for the respondent was 3145 Brighton 4th Street, Brooklyn, and that prior addresses for respondent included Huntington, New York, as well as at least two other addresses in Brooklyn. The witness also noted that the Police Accident Report for the subject accident reflects the Brighton 4th Street

address as Krutishinkiy's residence.

Krutishinkiy appeared for an examination under oath ("EUO") on September 6, 2011. At that time, the respondent identified his address as 3145 Brighton 4th Street, Brooklyn, New York. Krutishinkiy further testified that his W-2 and 1099 statements, two separate bank accounts, drivers license, and green card immigration paperwork all indicated his address to be 3145 Brighton 4th Street, Brooklyn. The respondent also acknowledged that his employment was in Brooklyn, and that he paid one half of the rent for the apartment at 3145 Brighton 4th Street, which he shared with two other persons.

With regard to the subject accident, Glampe testified that the vehicle operated by Krutoshinskiy was leased from a leasing agent located in Brooklyn, and that the car was also serviced and maintained in Brooklyn. The respondent's drivers license issued on March 8, 2011 identified Krutoshinskiy's address as 3145 Brighton 4th Street, Brooklyn. During his EUO, the respondent stated that the subject accident occurred on Brighton 4th Street while he was on his way home.

Alleging that he was injured as a result of the subject accident, Krutishinkiy applied for no-fault benefits. His application indicated that he was going to be treating three times per week with various providers at Medical Plaza on Ocean Parkway, Brooklyn. The scope of the treatment he received in Brooklyn included physical therapy, chiropractic and acupuncture services, MRIs, and neurological and psychological services. Glampe noted that he reviewed a July 27, 2011 delivery receipt from Orthoplus Products to the respondent at 3145 Brighton 4th Street. The delivery, which was signed for by Krutishinkiy, included a cervical pillow, one lumbral-lumbar sacral support, infrared heating lamp, and a dry pressure mattress and pad, which is essentially a bed board. Glampe also reviewed a delivery receipt for an E.M.S. unit with four leads and a rotary back massager which was delivered to the respondent at the Brighton 4th Street address on August 24, 2011. The witness further noted that a review of various assignment of benefit forms for Metro Psych Services, Icon Chiropractic, and S.R. Medical, identified respondent's residence as 3145 Brighton 4th Street, Brooklyn.

Based on the foregoing, the witness concluded on July 20, 2011, Vitaliy Krutishinkiy was residing at 3145 Brighton 4th Street, Brooklyn, New York.

The respondent, Vitaliy Krutishinkiy, was the next witness called to the stand. He offered the following testimony:

The witness currently resides at 3 Harvest Hill Lane, Huntington, New York, with his mother Alla and his step-father Daniel. In the past the witness also sometimes resided at 3145 Brighton 4th Street, Brooklyn, New York, an apartment leased by Daniel and used as a family Summer home as well as a residence for Vitaliy's grandparents.

The subject vehicle operated by Vitaliy on the date of the accident was owned by his mother Alla. The witness had the permission of his mother to operate the vehicle and he used it

for purposes of general driving, commuting to college, assisting his grandparents, and traveling between Brooklyn and Huntington. The vehicle was also operated by his parents on occasion.

The witness had living space, a bedroom, various clothes, and a toothbrush at both the Brooklyn and Huntington addresses. Acknowledging that he spent time at both locations, Vitaliy spends his holidays with family at the Huntington address. Upon completing college and graduate school, the witness left Brooklyn and now resides at 3 Harvest Lane, Huntington, New York, with his mother and step-father on a full-time basis.

Krutoshinskiy acknowledged that on the date of the accident, July 20, 2011, his driver's license, employment W2 forms, Federal Income Tax return, No-Fault application, and all medical records related to his treatment resulting from the subject accident, all reflected his residence as 3145 Brighton 4th Street, Brooklyn, New York. He also confirmed that his medical treatment and physical therapy occurred in Brooklyn. The witness was not in possession of any documentation from 2011 that identified his residence as Huntington, New York. He concluded his testimony by contending that he had never intended to make Brooklyn his permanent residence and that upon completion of college and graduate school he left Brooklyn to reside at 3 Harvest Lane, Huntington, New York, where he still currently resides year round.

The Court finds the testimony of Vitaliy Krutoshinskiy to be credible. He readily acknowledged that he resided at the Brooklyn address with his grandparents while he attended college in the area. He further acknowledged that the subject Brooklyn apartment was leased by his step-father, and was used as a family Summer home as well as a residence for the respondent's grandparents. The respondent also noted that various family members would also spend time and stay over at the Brooklyn address.

Krutoshinskiy's actions are consistent with that of a college student who designates the community in which his college is located as his temporary residence. He testified that although he was temporarily residing in Brooklyn, he also maintained a residence with his mother and step-father in Huntington, and that it was always his intention to return to the latter address. In fact, the respondent did actually move back to the Huntington address upon completing his education. Based upon the fact that he resided part-time with his mother, it is conceivable and reasonable to conclude and believe that the respondent's mother would grant him access and permission to use the subject vehicle, which was owned and insured by her.

Upon the testimony of the witnesses at the Framed Issue Hearing, the Court finds the following: that at the time of the accident, Vitaliy Krutoshinskiy was a temporary resident of 3145 Brighton 4th Street, Brooklyn, New York, as well as a resident of 3 Harvest Hill Lane, Huntington, New York, with the intention of returning to 3 Harvest Hill Lane, Huntington, New York for permanent residency; that Vitaliy Krutoshinskiy was given permission to operate the subject vehicle, which vehicle was insured by respondent's mother, Alla Kane; that Vitaliy Krutoshinskiy qualifies as a resident relative of insured Alla Kane's household on the date of loss, July 20, 2011; that Vitaliy Krutoshinskiy is entitled to proceed with the demanded uninsured motorist arbitration upon full compliance with the discovery provisions of the subject

policy of insurance issued to Alla Kane by Ameriprise Insurance Company.

ORDERED, that the petition of Ameriprise Insurance Company, pursuant to CPLR 7503, for an Order permanently staying the Respondent, Vitaliy Krutoshinskiy, from proceeding to Arbitration under the subject policy of insurance issued to Alla Kane under Insurance Policy No.: A101522453, is denied, and the parties are directed to proceed to Arbitration upon completion of discovery.

The foregoing constitutes the Order of this Court.

Dated: April 11, 2019

Denise F. Molia

HON. DENISE F. MOLIA A.J.S.C.