

**State Farm Mut. Auto. Ins. Co. v Accurate
Monitoring, LLC**

2020 NY Slip Op 32915(U)

September 3, 2020

Supreme Court, New York County

Docket Number: 159161/2019

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYLE E. FRANK PART IAS MOTION 52EFM

Justice

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INDEX NO. 159161/2019
MOTION DATE 08/21/2020
MOTION SEQ. NO. 001

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff,

- v -

ACCURATE MONITORING, LLC, ALL CITY FAMILY HEALTH CARE, INC., AML MEDICAL CARE, P.C., ANESTHESIA PROFESSIONALS PA, CITIMEDICAL I, PLLC, CVS RX, INC. D/B/A EXPRESS PHARMACY, INC., MOUNT SINAI ELMHURST FACULTY PRACTICE GROUP, HEALTHWISE MEDICAL SERVICES, P.C., INTEGRAL ASSIST MEDICAL, P.C., INTEGRATED PAIN MANAGEMENT, PLLC, ISURPLY, LLC, LENCO DIAGNOSTIC LABORATORY, INC., MEL SAYED PHYSICAL THERAPY, P.C., MANALAPAN SURGERY CENTER, INC, MFS SUPPLY CORP, MID-STATE ANESTHESIA CONSULTANTS, LLC, NEUROPHYSIOLOGIC INTERPRETIVE MEDICINE, PLLC, NEW YORK CITY HEALTH AND HOSPITAL, NY RX PHARMACY, INC, ORTHOPAEDICS SPINE AND SPORTS MEDICINE, P.C., PAUL ACKERMAN, M.D., P.C., PDA NY CHIROPRACTIC, P.C., PRC SUPPLIES, INC., RIGHT CHOICE SUPPLY, INC., ROXBURY ANESTHESIA, LLC, SAME DAY PROCEDURES, LLC, STEPHENS ACUPUNCTURE, P.C., LOUIS H VASTOLA, LLC, CONFIDENT MEDICAL SERVICES, P.C., MEDVANTAGE/DURAMED, ONE OAK MEDICAL GROUP, LEONY MANZUETA, CINDY REYES, ELVIN ALCANTARA RODRIGUEZ

AMENDED DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71; 72, 73, 74, 75, 78, 79, 80

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, the motion for default is granted in part as to defendants

AML MEDICAL CARE, P.C., ANESTHESIA PROFESSIONALS PA, CVS RX, INC. D/B/A EXPRESS PHARMACY, INC., MOUNT SINAI ELMHURST FACULTY PRACTICE GROUP, INTEGRAL ASSIST MEDICAL, P.C., INTEGRATED PAIN MANAGEMENT,

PLLC, ISURPLY, LLC, Lenco Diagnostic Laboratory, Inc., M EL SAYED PHYSICAL THERAPY, P.C., MANALAPAN SURGERY CENTER, INC, MFS SUPPLY CORP, MID-STATE ANESTHESIA CONSULTANTS, LLC, NEW YORK CITY HEALTH AND HOSPITAL, ORTHOPAEDICS SPINE AND SPORTS MEDICINE, P.C., PAUL ACKERMAN, M.D., P.C., PRC SUPPLIES, INC., ROXBURY ANESTHESIA, LLC, LOUIS H VASTOLA, LLC, CONFIDENT MEDICAL SERVICES, P.C., MEDVANTAGE/DURAMED, LEONY MANZUETA, CINDY BRITO REYES, ELVIN ALCANTARA RODRIGUEZ without opposition. ¹ ²The clerk is directed to enter judgment as to these defendants.

Plaintiff commenced this action seeking resolution from denied and/or pending insurance claims in connection to an alleged falsified automobile accident involving defendants LEONY MANZUETA, CINDY BRITO REYES, and ELVIN ALCANTARA RODRIGUEZ. Plaintiff moves pursuant to CPLR §3215 seeking a default judgment against defendants, ALL CITY FAMILY HEALTHCARE CENTER, INC., AML MEDICAL CARE, P.C., ANESTHESIA PROFESSIONALS, P.A., CITIMEDICAL I, PLLC, CVS RX, INC., MOUNT SINAI ELMHURST FACULTY PRACTICE GROUP, HEALTHWISE MEDICAL SERVICES, P.C., INTEGRAL ASSIST MEDICAL, P.C., INTEGRATED PAIN MANAGEMENT, PLLC, ISURPLY, LLC, Lenco Diagnostic Laboratories, Inc., M EL SAYED PHYSICAL THERAPY, P.C., MANALAPAN SURGERY CENTER, INC., MFS SUPPLY CORP., MID-STATE ANESTHESIA CONSULTANTS, LLC, ORTHOPAEDICS SPINE AND SPORTS MEDICINE, LLC, PAUL ACKERMAN, M.D., P.C., PDA NY CHIROPRACTIC, P.C., PRC

¹ ACCURATE MONITORING, LLC, NUEROPHYSIOLOGIC INTERPRETATIVE MEDICINE, PLLC, and SAME DAY PROCEDURES, LLC, were discontinued from this action. NYSCEF Doc. No. 5; NYSCEF Doc. No. 8. Further noted, Plaintiff rejected an answer received from TOTAL ORTHOPEDICS because no company operating under the name Total Orthopedics had been a named defendant to this action. NYSCEF Doc. No. 11.

² The Court would like to thank Tessa Tigar-Cross for her assistance in this matter.

SUPPLIES, INC., RIGHT CHOICE SUPPLY, INC., ROXBURY ANESTHESIA, LLC, STEPHENS ACUPUNCTURE, P.C., LOUIS H VASTOLA, LLC, CONFIDENT MEDICAL SERVICES, P.C., MEDVANTAGE/DURAMED, LLC, LEONY MANZUETA, and CINDY BRITO REYES for their failure to answer and/or appear in this action. In support of the motion, plaintiff annexes proof of service of the summons to the defendants and the verified complaint.

Defendants ALL CITY FAMILY HEALTH CARE, INC., CITIMEDICAL I, PLLC, HEALTHWISE MEDICAL SERVICES, P.C., PDA NY CHIROPRACTIC, P.C., and STEPHENS ACUPUNCTURE, P.C. filed a cross-motion for an extension of time on August 14, 2020. Separately, defendant RIGHT CHOICE SUPPLY, INC., filed an Answer on August, 16, 2020, and filed no opposition to Plaintiff's motion.³

Default judgment for the untimely initial appearance or filing in a matter is appropriate on the basis of prejudice to the plaintiff(s). However, as in this instance, when no risk of prejudice exists because of the length of delay, public policy strongly favors the meritorious resolution of cases. Thus, the motion for default as to defendants ALL CITY FAMILY HEALTH CARE, INC., CITIMEDICAL I, PLLC, HEALTHWISE MEDICAL SERVICES, P.C., PDA NY CHIROPRACTIC, P.C., RIGHT CHOICE SUPPLY, INC., and STEPHENS ACUPUNCTURE, P.C., is denied.

An application for a default judgment must be supported by either an affidavit of facts made by one with personal knowledge of the facts surrounding the claim or a complaint verified by a person with actual knowledge of the facts surrounding the claim. *Zelnick v Biderman*

³ NY RX PHARMACY, INC., filed a timely Answer on October 28, 2019. NYSCEF Doc. No. 2. ONE OAK MEDICAL, LLC, filed a timely Answer on December 13, 2019 after parties stipulated to an extension. NYSCEF Doc. Nos. 4, 9.

Industries U.S.A., Inc., 242 AD2d 227 [1st Dept 1997]; *Hazim v Winter*, 234 AD2d 422 [2d Dept 1996].

Plaintiff has demonstrated that on October 2, 2019, the summons and verified complaint was duly served upon MEDVANTAGE/DURAMED. Plaintiff has demonstrated that on October 4, 2019, the summons and verified complaint was duly served upon ANESTHESIA PROFESSIONALS PA, AML MEDICAL CARE, P.C., CVS RX, INC. D/B/A EXPRESS PHARMACY, INC., INTEGRAL ASSIST MEDICAL, P.C., INTEGRATED PAIN MANAGEMENT, PLLC, ISURPLY, LLC, MOUNT SINAI ELMHURST FACULTY PRACTICE GROUP LENCO DIAGNOSTIC LABORATORY, INC, MANALAPAN SURGERY CENTER, INC, MFS SUPPLY CORP., NEW YORK CITY HEALTH AND HOSPITAL, ORTHOPAEDICS SPINE AND SPORTS MEDICINE, P.C., PAUL ACKERMAN, M.D., P.C., PRC SUPPLIES, INC., LOUIS H VASTOLA, LLC, LEONY MANZUETA. Plaintiff has demonstrated that on October 7, 2019, the summons and verified complaint was duly served upon MID-STATE ANESTHESIA CONSULTANTS, LLC, Further, Plaintiff has demonstrated that on October 10, 2019, the summons and verified complaint was duly served upon ROXBURY ANESTHESIA, LLC., and that on October 11, 2019 the summons and verified complaint was duly served upon CINDY BRITO REYES. Plaintiff has demonstrated that on December 24, 2019, the summons and verified complaint was duly served upon M EL SAYED PHYSICAL THERAPY, P.C. Plaintiff has demonstrated that on January 4, 2020, the summons and verified complaint was duly served upon CONFIDENT MEDICAL SERVICES, P.C. Additionally, Plaintiff has demonstrated that on August 5, 2020, the request for judicial intervention, notice of motion, and affirmation was served upon the above defendant. To date, the above defendants have failed to answer, appear, or obtain an order from the court

extending its time to do so, and the time to answer or otherwise appear has expired. Accordingly, it is hereby

ORDERED that a default judgment is granted as against defendants AML MEDICAL CARE, P.C., ANESTHESIA PROFESSIONALS PA, CVS RX, INC. D/B/A EXPRESS PHARMACY, INC., MOUNT SINAI ELMHURST FACULTY PRACTICE GROUP, INTEGRAL ASSIST MEDICAL, P.C., INTEGRATED PAIN MANAGEMENT, PLLC, ISURPLY, LLC, Lenco DIAGNOSTIC LABORATORY, INC., M EL SAYED PHYSICAL THERAPY, P.C., MANALAPAN SURGERY CENTER, INC, MFS SUPPLY CORP, MID-STATE ANESTHESIA CONSULTANTS, LLC, NEW YORK CITY HEALTH AND HOSPITAL, ORTHOPAEDICS SPINE AND SPORTS MEDICINE, P.C., PAUL ACKERMAN, M.D., P.C., PRC SUPPLIES, INC., ROXBURY ANESTHESIA, LLC, LOUIS H VASTOLA, LLC, CONFIDENT MEDICAL SERVICES, P.C., MEDVANTAGE/DURAMED, LEONY MANZUETA, CINDY REYES, ELVIN ALCANTARA RODRIGUEZ; and it is further

ORDERED that defendants', ALL CITY FAMILY HEALTH CARE, INC., CITIMEDICAL I, PLLC, HEALTHWISE MEDICAL SERVICES, P.C., PDA NY CHIROPRACTIC, P.C., and STEPHENS ACUPUNCTURE, P.C., cross-motion is granted and the time to answer is hereby extended to 15 days after Notice of Entry of this order; and it is further

ORDERED that a copy of this order with notice of entry be served by the movant upon the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who is directed, upon the filing of a note of issue and a certificate of readiness and the payment of proper fees, if any, to place this action on the appropriate trial calendar for the assessment hereinabove directed; and it is further

ORDERED that such service upon the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

9/3/2020
DATE


LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

HON. LYLE E. FRANK, J.S.C.