

American Tr. Ins. Co. v Olivieri
2021 NY Slip Op 32311(U)
November 12, 2021
Supreme Court, New York County
Docket Number: Index No. 157694/2020
Judge: Laurence L. Love
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

-----X

AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

CINDY OLIVIERI, AAAMG LEASING CORP., BAY RIDGE
ORTHOPEDIC ASSOCIATES, P.C., DHD MEDICAL, P.C.

Defendant.

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INDEX NO. 157694/2020

MOTION DATE 09/20/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for JUDGMENT - DECLARATORY.

Upon the foregoing documents, the motion is decided as follows:

Plaintiff American Transit Insurance Company ("ATIC") commenced this action by filing of a summons and complaint on September 21, 2020. On October 19, 2020, AAAMG Leasing Corp., Bay Ridge Orthopedic Associates, PC and DHD Medical, PC were served pursuant to BCL 306. On November 12, 2020, Cindy Olivieri was served pursuant to CPLR 308(2). On March 11, 2021, plaintiff mailed additional copies of the summons and complaint to all defendant pursuant to CPLR 3215(g)(3) and (4). As such, defendants are now in default.

Plaintiff now seeks a default judgment against the non-answering defendants, granting plaintiff a declaratory judgment that Cindy Olivieri is not an eligible injured person entitled to no-fault benefits under ATIC insurance policy B711084, Claim No.: 1057779-02, granting ATIC a declaratory judgment that ATIC is not obligated to honor or pay claims for reimbursement submitted by the medical providers named herein, as assignees of Cindy Olivieri, under ATIC insurance policy B711084, Claim No.: 1057779-02, nor is ATIC required to provide, pay, honor

or reimburse any claims set forth herein, in any current or future proceeding, including, without limitation, arbitrations and/or lawsuits seeking to recover no-fault benefits arising under ATIC insurance policy B711084, Claim No.: 1057779-02 from the alleged accident of May 7, 2019, involving Olivieri as same is not an eligible injured person as defined by the Policy and/or New York State Regulation 68; a declaratory judgment that ATIC is not required to provide, pay, or honor any current or future claim for no-fault benefits under the Mandatory Personal Injury Protection endorsement under ATIC insurance policy B711084, Claim No.: 1057779-02, nor is ATIC required to provide, pay, honor or reimburse any claims set forth herein, in any current or future proceeding, including, without limitation, arbitrations and/or lawsuits seeking to recover no-fault benefits arising under ATIC insurance policy B711084, Claim No.: 1057779-02 from the alleged accident of May 7, 2019, involving Olivieri as Olivieri is not an eligible injured person as defined by the Policy and/or New York State Regulation 68.

In support of its motion, plaintiff submits the affidavits of Cheryl Glaze, a No-Fault Claims supervisor employed by plaintiff, Luis Campbell, the mail room supervisor employed by plaintiff, and Lynn Hershman, an employee of Independent Physical Exam Referrals, Inc., who schedules IME appointments on behalf of plaintiff, the affidavit of Francisco H. Santiago, the doctor assigned to conduct said IMEs, together with the relevant insurance policy and supporting documents, which establish as follows: On May 7, 2019, a vehicle insured by non-party Carlos Sosataveras was involved in a motor vehicle accident. Olivieri made a claim to ATIC, as a purported eligible injured person of the above-referenced insurance policy, to the plaintiff under claim #1057779-02. Arising from the accident, Olivieri made no-fault insurance claims with ATIC and assigned her benefits to various medical providers, who submitted claims to ATIC seeking reimbursement. Plaintiff mailed letters to Olivieri and her attorney scheduling an IME on July 11, 2019 with Dr.

Francisco H. Santiago. Olivieri failed to appear at said IME. Plaintiff mailed letters to Olivieri and her attorney scheduling an IME on August 8, 2019 with Dr. Santiago. Olivieri failed to attend said IME. Based upon Olivieri's failure to attend the scheduled IMEs, she has breached a condition precedent to insurance coverage and based upon same, plaintiff mailed general denials to the no-fault claimants on August 15, 2019. As such, plaintiff has established an entitlement to a default judgment against all defendants. Accordingly, it is hereby:

ORDERED that Cindy Olivieri is not an eligible injured person entitled to no-fault benefits under ATIC insurance policy B711084, Claim No.: 1057779-02; and it is further

ORDERED that ATIC is not obligated to honor or pay claims for reimbursement submitted by the defaulting medical providers (AAAMG Leasing Corp., Bay Ridge Orthopedic Associates, PC and DHD Medical, PC), as assignees of Cindy Olivieri, under ATIC insurance policy B711084, Claim No.: 1057779-02, nor is ATIC required to provide, pay, honor or reimburse any claims set forth herein, in any current or future proceeding, including, without limitation, arbitrations and/or lawsuits seeking to recover no-fault benefits filed by AAAMG Leasing Corp., Bay Ridge Orthopedic Associates, PC and DHD Medical, PC from the alleged accident of May 7, 2019, involving Olivieri as same is not an eligible injured person as defined by the Policy and/or New York State Regulation 68; and it is further

ORDERED that ATIC is not required to provide, pay, or honor any current or future claim for no-fault benefits submitted by the defaulting medical providers under the Mandatory Personal Injury Protection endorsement under ATIC insurance policy B711084, Claim No.: 1057779-02, nor is ATIC required to provide, pay, honor or reimburse any claims set forth herein, in any current or future proceeding, including, without limitation, arbitrations and/or lawsuits seeking to recover no-fault benefits arising under ATIC insurance policy B711084, Claim No.: 1057779-02 from the

alleged accident of May 7, 2019, involving Olivieri as Olivieri is not an eligible injured person as defined by the Policy and/or New York State Regulation 68.

<u>11/12/2021</u>			
<u>DATE</u>		<u>LAURENCE LOVE, J.S.C.</u>	
CHECK ONE:	☒ CASE DISPOSED	☐ NON-FINAL DISPOSITION	
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE