

American Tr. Ins. Co. v Martinez
2021 NY Slip Op 32758(U)
December 21, 2021
Supreme Court, New York County
Docket Number: Index No. 157114/2020
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

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AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

JUSTIN MARTINEZ, ALEXIAS'S PHARMACY INC,
ARNOLD GOLDMAN M.D. PLLC, CHIROPRACTIC
ASSOCIATES OF RICHMOND HILL P.C., COMMUNITY
RADIOLOGY SERVICES, P.C., EXCELSIOR INTEGRATED
MEDICAL GROUP PLLC, SALIL GUPTA, M.D.
P.C., INTERVENTIONAL SPINAL PAIN CARE
P.C., ISURPLY LLC, JUSTIN MARTINEZ LLC, KANTER
PHYSICAL MEDICINE & REHAB, P.C., MOUNT SINAI
MEDICAL, P.C.

Defendant.

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INDEX NO. 157114/2020MOTION DATE 08/20/2021MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31

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 August 26, 2020. On September 28, 2020, the corporate defendants were served pursuant to BCL 306 and LLC Law 303 as appropriate. On November 6, 2020, Justin Martinez was served pursuant to CPLR 308(2). On March 15, 2021, plaintiff mailed additional copies of the summons and complaint to all defendants pursuant to CPLR 3215(g)(3) and (4). Answers have been interposed by Alexia's Pharmacy, Inc., Kanter Physical Medicine & Rehab, LLC and Chiropractic Associates of Richmond Hill, PC. As such, defendants, Arnold Goldman, MD, PLLC, Community Radiological Services, PC, Excelsior Integrated Medical Group PLLC, Salil Gupta, MD. PC, Interventional Spinal Pain Care, PC, ISurply, LLC, Justin

Martinez, LLC, and Mount Sinai Medical, PC (the “Non-Answering Defendants”) are now in default.

Plaintiff now seeks a default judgment against the non-answering defendants and summary judgment against the Answering Defendants, granting plaintiff a declaratory judgment that Justin Martinez is not an eligible injured person entitled to no-fault benefits under ATIC insurance policy B705934, Claim No.: 1065669-01, 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 Justin Martinez, under ATIC insurance policy B705934, Claim No.: 1065669-01, 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 B705934, Claim No.: 1065669-01 from the alleged accident of August 11, 2019, involving Martinez 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 B705934, Claim No.: 1065669-01, 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 B705934, Claim No.: 1065669-01 from the alleged accident of August 11, 2019, involving Martinez as Martinez 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 Dr. Michael Russ, the doctor assigned to conduct said IMEs, together with the relevant insurance policy and supporting documents, which establish as follows: On August 11, 2019, a vehicle insured by plaintiff and owned by non-party Guohui Lu was involved in a motor vehicle accident. Justin Martinez made a claim to ATIC, as a purported eligible injured person of the above-referenced insurance policy, to the plaintiff under claim #1065669-01. Arising from the accident, Martinez made no-fault insurance claims with ATIC and assigned his benefits to various medical providers, who submitted claims to ATIC seeking reimbursement. Plaintiff mailed letters to Martinez and his attorneys scheduling an IME on January 6, 2020 with Dr. Michael Russ. Martinez failed to appear at said IME. Plaintiff mailed letters to Martinez and his attorney scheduling an IME on January 27, 2020 with Dr. Russ. Martinez failed to attend said IME. Based upon Martinez's failure to attend the scheduled IMEs, he has breached a condition precedent to insurance coverage and based upon same, plaintiff mailed general denials to the no-fault claimants on February 6, 2020. As such, plaintiff has established an entitlement to a default judgment against the Defaulting Defendants and Summary Judgment against the answering defendants.

In opposition, defendants Kanter Physical Medicine & Rehab, LLC and Chiropractic Associates of Richmond Hill, PC submit the affidavit of Justin Martinez and the affirmation of his attorney, Robert Brent, Esq., together with supporting documentation, which establish as follows: On November 18, 2019, at the request of ATIC, Justin Martinez attended an IME conducted by Dr. Russ. Thereafter, Mr. Martinez received two more letters scheduling IMEs to be conducted by Dr. Russ on January 6 and January 27, 2020 respectively. In December, 2019, Mr. Martinez was hired as a nurse at NYU Langone Health, with a six month probationary period, during which time

he could not miss work. On both occasions, Robert Brent's office informed Independent Physical Exam Referrals, Inc. that Mr. Martinez had a scheduling conflict and would be unable to attend the scheduled IMEs. As such, there is an issue of fact as to whether Mr. Martinez failed to cooperate with plaintiff.

Plaintiff's motion is hereby DENIED in its entirety.

<u>12/21/2021</u>			
DATE		LAURENCE LOVE, J.S.C.	
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