

Erie Ins. Co. of N.Y. v Alvarez
2022 NY Slip Op 30320(U)
January 31, 2022
Supreme Court, New York County
Docket Number: Index No. 155333/2020
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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ERIE INSURANCE COMPANY OF NEW YORK,

Plaintiff,

- v -

WILMER ALVAREZ, ALL ABOUT CHIROPRACTIC P.C., ALL COUNTY, LLC, BEST HANDS-ON PHYSICAL THERAPY, P.C., BIG APPLE MED EQUIPMENT INC, CHOI-GO ACUPUNCTURE PLLC, CHOICE ACUPUNCTURE PLLC, CITYWORKS PHYSICAL THERAPY P.C., ENS MEDICAL, P.C., HEALING SERVICES INC, J PARK CHIROPRACTIC P.C., JA PHYSICAL THERAPY P.C., MASPETH RX INC., METRO PAIN SPECIALISTS PROFESSIONAL CORPORATION, MILL MEDICAL P.C., PHYSICAL THERAPY OF NEW YORK P.C., PREMIER ANESTHESIA ASSOCIATES PA, SCOB, LLC, TOPLAB, UNION DME CORP, WELLNESS PHYSICAL THERAPY REHABILITATION P.L.L.C.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51

were read on this motion to/for DISCONTINUE

Upon the foregoing documents, plaintiff's motion seeking a default judgment against defendants, Wilmer Alvarez, All About Chiropractic, PC, All County, LLC, Best Hands-On Physical Therapy, PC, Choi-Go Acupuncture, PLLC, Choice Acupuncture, PLLC, Cityworks Physical Therapy, PC ENS Medical, PC, Healing Services, Inc., J Park Chiropractic, PC, JA physical Therapy, PC, Maspeth RX, Inc. Metro Pain Specialists, PC, Mill Medical, PC, Physical Therapy Of New York, PC, Toplab, Union DME Corp, and Wellness Physical Therapy Rehabilitation, PLLC, Metro Pain Specialists, PC cross-motion seeking to compel acceptance of a

DECISION + ORDER ON MOTION

late answer and Plaintiff's motion seeking leave to discontinue against defendant, Metro Pain Specialists, PC is as follows:

Plaintiff commenced the instant action by filing a summons and complaint on July 14, 2020. On August 13, 2020 defendant, Wilmer Alvarez was served pursuant to CPLR 308(2). Plaintiff completed service on the medical provider defendant on July 30, 2020 pursuant to BCL 306 or LLC Law 303 as appropriate. On September 9, 2020, Metro Pain Specialists, PC interposed an Answer, which was rejected as untimely by plaintiff. On September 15, 2020, plaintiff mailed additional copies of the summons and complaint to all defendants pursuant to CPLR 3215(g). Plaintiff now moves for a default judgment against Wilmer Alvarez, All About Chiropractic, PC, All County, LLC, Best Hands-On Physical Therapy, PC, Choi-Go Acupuncture, PLLC, Choice Acupuncture, PLLC, Cityworks Physical Therapy, PC ENS Medical, PC, Healing Services, Inc., J Park Chiropractic, PC, JA physical Therapy, PC, Maspeth RX, Inc., Mill Medical, PC, Physical Therapy Of New York, PC, Toplab, Union DME Corp, and Wellness Physical Therapy Rehabilitation, PLLC ("Defaulting Defendants").

In support of its motion, plaintiff submits the affidavits of Elsie Vasquez, a Medical Management Claims Specialist employed by plaintiff, copies of IME Scheduling Letters the Affidavits of Michele Miles and JiHoon Kim, D.C., L.Ac. and Affirmations of Bo Headlam, M.D., Steven Renzoni, M.D., and Jay Eneman, M.D., (see, CPLR 3215[f]; *Henriquez v. Purins*, 245 AD2d 337 [2nd Dept 1997]; *Rafiq v. Weston*, 171 AD2d 783 [2nd Dept 1991]; *Woodson v. Mendon Leasing Corp.*, 100 NY2d 62 [NY 2003]). Said submissions establish as follows: On February 28, 2019, Wilmer Alvarez was the occupant of a 2008 Nissan SUV, owned by Alvarez, which was involved in a motor vehicle accident. Alvarez made a claim to Erie, as a purported eligible injured person of the above-referenced insurance policy, to the plaintiff under claim #

A00001653657. Arising from the accident, Alvarez made no-fault insurance claims with Erie and assigned his benefits to various medical providers, who submitted claims to Erie seeking reimbursement. Plaintiff mailed letters to Alvarez and his attorney scheduling IMEs on 7/2/2019, 7/8/2019, 7/23/2019 and 7/25/2019, all of which Alvarez failed to attend. As such, Alvarez has breached a condition precedent to insurance coverage. As such, plaintiff has established an entitlement to a default judgment against the non-answering defendants.

It is clear that "absent a showing of special circumstances, including prejudice to a substantial right of the defendant or other improper consequences, a motion for a voluntary discontinuance should be granted without prejudice" (*Am. Tr. Ins. Co. v Roberson*, 114 AD3d 821 [App Div 2d Dept 2014]). Defendant, Metro Pain Specialists, PC, has failed to substantiate a reason to deny the motion to discontinue.

Accordingly, it is hereby:

ORDERED that plaintiff's motion seeking to discontinue this action against Metro Pain Specialists, PC, is GRANTED in its entirety and said defendant's cross-motion seeking to interpose a late answer is DENIED as moot; and it is further

ORDERED that Plaintiff's motion for default judgment against Wilmer Alvarez, All About Chiropractic, PC, All County, LLC, Best Hands-On Physical Therapy, PC, Choi-Go Acupuncture, PLLC, Choice Acupuncture, PLLC, Cityworks Physical Therapy, PC ENS Medical, PC, Healing Services, Inc., J Park Chiropractic, PC, JA physical Therapy, PC, Maspeth RX, Inc., Mill Medical, PC, Physical Therapy Of New York, PC, Toplab, Union DME Corp, and Wellness Physical Therapy Rehabilitation, PLLC is granted; and it is further,

ORDERED and ADJUDGED that on the first cause of action Plaintiff owes no duty to Defendants, Wilmer Alvarez, All About Chiropractic, PC, All County, LLC, Best Hands-On

Physical Therapy, PC, Choi-Go Acupuncture, PLLC, Choice Acupuncture, PLLC, Cityworks Physical Therapy, PC ENS Medical, PC, Healing Services, Inc., J Park Chiropractic, PC, JA physical Therapy, PC, Maspeth RX, Inc., Mill Medical, PC, Physical Therapy Of New York, PC, Toplab, Union DME Corp, and Wellness Physical Therapy Rehabilitation, PLLC to pay No-Fault claims submitted in relation to the February 28, 2019 loss, Claim No.: A00001653657, referenced in the complaint involving Wilmer Alvarez, and it is further,

ORDERED and ADJUDGED that on the second cause of action that all arbitrations, lawsuits and enforcement of awards or judgments in connection with the February 28, 2019 loss, Claim No.: A00001653657, referenced in the complaint involving Wilmer Alvarez, are hereby permanently stayed.

1/31/2022
DATE


LAURENCE LOVE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
					<input type="checkbox"/>
					REFERENCE