

**State Farm Mut. Auto. Ins. Co. v Bliss Acupuncture,  
P.C.**

2022 NY Slip Op 32306(U)

June 30, 2022

Supreme Court, New York County

Docket Number: Index No. 160348/2020

Judge: Verna L. Saunders

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. VERNA L. SAUNDERS, JSC PART 36M

Justice

INDEX NO. 160348/2020
MOTION SEQ. NO. 001

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff,

- v -

BLISS ACUPUNCTURE, P.C.,
BV PHYSICAL THERAPY, P.C.,
CITY WIDE HEALTH FACILITY, INC.,
COMPREHENSIVE PSYCHOLOGICAL EVALUATION, P.C.,
ELITE DRUGS AND SURGICAL,
ENS MEDICAL, P.C.,
FLORID LEISURE ACUPUNCTURE, P.C.,
GRAND MEDICAL SUPPLY CORP.,
HYUN PHYSICAL THERAPY, P.C.,
INEW REHAB PHYSICAL THERAPY, P.C.,
INJE PHYSICAL THERAPY, P.C.,
INSTA DRUGS, INC.,
JORDON FERSEL, M.D., P.C.,
JOSEPH A. RAIA, M.D., P.C.,
LZ MEDICAL DIAGNOSTIC,
MIN PHYSICAL THERAPY, P.C.,
PERFORMANCE CHIROPRACTIC, P.C.,
QUEENS BOULEVARD CHIROPRACTIC, P.C.,
STEPHEN MATRANGOLO, D.C., P.C.,
SUESSERMAN CHIROPRACTIC, P.C.,
BERNADETTE MAYERS, N.P.,
DIMITRI BAZIN, P.A.,
MARINA GADABORSHEV, D.C.,
RENAN MACIAS, M.D.,
LAMEL JEFFERY,
ANTHONY EDWARDS

Defendants.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60

were read on this motion to/for

DEFAULT JUDGMENT

In this action seeking a declaratory judgment, plaintiff moves, pursuant to CPLR 3215, for a default judgment against defendants BLISS ACUPUNCTURE, P.C., BV PHYSICAL THERAPY, P.C., COMPREHENSIVE PSYCHOLOGICAL EVALUATION, P.C., ENS MEDICAL, P.C., FLORID LEISURE ACUPUNCTURE, P.C., HYUN PHYSICAL THERAPY, P.C., INEW REHAB PHYSICAL THERAPY, P.C., INJE PHYSICAL THERAPY, P.C., JORDON FERSEL, M.D., P.C., JOSEPH A. RAIA, M.D., P.C., LZ MEDICAL DIAGNOSTIC,

MIN PHYSICAL THERAPY, P.C., QUEENS BOULEVARD CHIROPRACTIC, P.C., SUESSERMAN CHIROPRACTIC, P.C., DIMITRI BAZIN, P.A., and LAMEL JEFFERY (NYSCEF Doc. No. 46, *notice of motion*).

Despite service of the motion papers, (NYSCEF Doc. No. 57, *proof of service*) the instant application is not opposed.

CPLR 3215(a) provides, in pertinent part, that when “a defendant has failed to appear, plead or proceed to trial ... the plaintiff may seek a default judgment...” To establish his/her/their entitlement to a default judgment, the movant must demonstrate proof of service of the summons and complaint, proof of the facts constituting the claim and proof of the default. (See *PV Holding Corp. v AB Quality Health Supply Corp.*, 2020 NY Slip op 07725[U] at \*1 [1st Dept 2020]; *Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 417, 317 [1st Dept 2016].) 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. (See *Zelnick v Biderman Indus. U.S.A., Inc.*, 242 AD2d 227, 229 [1st Dept 1997]; *Hazim v Winter*, 234 AD2d 422, 422 [2d Dept 1996].)

“Pursuant to the Insurance Regulations, an insurer may request that an eligible injured party appear for an EUO to verify the no-fault claim, and may deny no-fault benefits if the eligible injured party fails to appear for the EUO” since “[c]ompliance with an EUO request is a condition precedent to no-fault coverage.” (*Country-Wide Ins. Co. v Ospina*, 2019 NY Slip Op 30444[U], \*7 [Sup Ct, NY County 2019] [citation omitted].) “To establish the failure of the party to appear for duly scheduled EUOs, the insurer must establish as a matter of law that it twice duly demanded an examination under oath, that the party twice failed to appear and that the insurer issued a timely denial.” (*Country-Wide Ins. Co. v Ospina*, 2019 NY Slip Op 30444[U] at \*8; see *Interboro Ins. Co. v Clennon*, 113 AD3d 596, 597 [2d Dept 2014].) “It is also incumbent upon the insurer to submit proof by someone with personal knowledge of the non-appearance.” (*Country-Wide Ins. Co. v Ospina*, 2019 NY Slip Op 30444[U] at \*10.)

Here, the affidavits of service establish that the defaulting defendants were served with the pleadings (NYSCEF Doc. No. 49, *affidavits of service*) and that additional copies of the pleadings were mailed as required by 3215(g)(4). (NYSCEF Doc. No. 56, *notice of default*.) Plaintiff also annexes proof of non-military status of the claimant defendant LAMEL JEFFREY (NYSCEF Doc. No. 55). To date, BLISS ACUPUNCTURE, P.C., BV PHYSICAL THERAPY, P.C., COMPREHENSIVE PSYCHOLOGICAL EVALUATION, P.C., ENS MEDICAL, P.C., FLORID LEISURE ACUPUNCTURE, P.C., HYUN PHYSICAL THERAPY, P.C., INEW REHAB PHYSICAL THERAPY, P.C., INJE PHYSICAL THERAPY, P.C., JORDON FERSEL, M.D., P.C., JOSEPH A. RAI, M.D., P.C., LZ MEDICAL DIAGNOSTIC, MIN PHYSICAL THERAPY, P.C., QUEENS BOULEVARD CHIROPRACTIC, P.C., SUESSERMAN CHIROPRACTIC, P.C., DIMITRI BAZIN, P.A., and LAMEL JEFFERY have failed to answer,

appear, or obtain an order from the court extending the time to do so, and the time to answer or otherwise appear has expired.

As to the facts constituting the claim, plaintiff submits, *inter alia*, the police report (NYSCEF Doc. No. 50); the letters providing notice to claimants LAMEL JEFFERY and ANTHONY EDWARDS of their schedule examinations under oath and the respective transcripts of the missed examinations under oath (NYSCEF Doc. No. 52); the affidavit of Timothy Dacey, Claim Specialist, who attests that claimants failed to appear for two properly scheduled EUO's (NYSCEF Doc. No. 47); and proof that the denials of each of claimant's claims were timely (NYSCEF Doc. No. 51,53-54; *claim denials*; 11 NYCRR 65-3.8). Accordingly, it is hereby

**ORDERED** that plaintiff's motion seeking a default judgment against LAMEL JEFFERY (NYSCEF Doc. No. 55). To date, BLISS ACUPUNCTURE, P.C., BV PHYSICAL THERAPY, P.C., COMPREHENSIVE PSYCHOLOGICAL EVALUATION, P.C., ENS MEDICAL, P.C., FLORID LEISURE ACUPUNCTURE, P.C., HYUN PHYSICAL THERAPY, P.C., INEW REHAB PHYSICAL THERAPY, P.C., INJE PHYSICAL THERAPY, P.C., JORDON FERSEL, M.D., P.C., JOSEPH A. RAIA, M.D., P.C., LZ MEDICAL DIAGNOSTIC, MIN PHYSICAL THERAPY, P.C., QUEENS BOULEVARD CHIROPRACTIC, P.C., SUESSERMAN CHIROPRACTIC, P.C., DIMITRI BAZIN, P.A., and LAMEL JEFFERY is granted; and it is further

**ORDERED, ADJUDGED and DECLARED** that plaintiff has no duty to pay any no-fault benefits in the form of sums, monies, damages, awards or benefits to BLISS ACUPUNCTURE, P.C., BV PHYSICAL THERAPY, P.C., COMPREHENSIVE PSYCHOLOGICAL EVALUATION, P.C., ENS MEDICAL, P.C., FLORID LEISURE ACUPUNCTURE, P.C., HYUN PHYSICAL THERAPY, P.C., INEW REHAB PHYSICAL THERAPY, P.C., INJE PHYSICAL THERAPY, P.C., JORDON FERSEL, M.D., P.C., JOSEPH A. RAIA, M.D., P.C., LZ MEDICAL DIAGNOSTIC, MIN PHYSICAL THERAPY, P.C., QUEENS BOULEVARD CHIROPRACTIC, P.C., SUESSERMAN CHIROPRACTIC, P.C., DIMITRI BAZIN, P.A., and LAMEL JEFFERY their agents, employees, assignees or heirs arising out of any current or future proceeding, including without limitation, arbitrations and lawsuits seeking to recover no-fault benefits with respect to the claims submitted in connection with the December 21, 2019 collision referenced in the complaint; and it is further

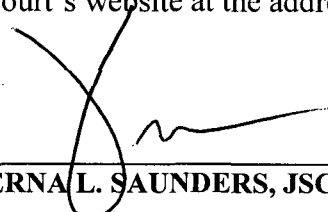
**ORDERED, ADJUDGED and DECLARED** that all no-fault lawsuits, arbitrations, including uninsured motorist, awards, and claims filed by BLISS ACUPUNCTURE, P.C., BV PHYSICAL THERAPY, P.C., COMPREHENSIVE PSYCHOLOGICAL EVALUATION, P.C., ENS MEDICAL, P.C., FLORID LEISURE ACUPUNCTURE, P.C., HYUN PHYSICAL THERAPY, P.C., INEW REHAB PHYSICAL THERAPY, P.C., INJE PHYSICAL THERAPY, P.C., JORDON FERSEL, M.D., P.C., JOSEPH A. RAIA, M.D., P.C., LZ MEDICAL DIAGNOSTIC, MIN PHYSICAL THERAPY, P.C., QUEENS BOULEVARD CHIROPRACTIC, P.C., SUESSERMAN CHIROPRACTIC, P.C., DIMITRI BAZIN, P.A., and LAMEL JEFFERY arising from or related to the claims submitted in connection with the December 21, 2019 collision referenced in the complaint are hereby stayed; and it is further

**ORDERED** that this judgment shall have no effect as to the appearing and/or remaining defendants; and it is further

**ORDERED** that, within twenty (20) days after this decision and order is uploaded to NYSCEF, counsel for plaintiffs shall serve a copy of this decision and order, with notice of entry, upon defendants, as well as, the Clerk of the Court, who shall enter judgment accordingly; and it is further

**ORDERED** that service upon the Clerk of the Court 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).

June 30, 2022

  
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HON. VERNA L. SAUNDERS, JSC

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: