

<b>Donheiser v Health Ins. Plan of N.Y., Inc.</b>
2022 NY Slip Op 32636(U)
August 4, 2022
Supreme Court, New York County
Docket Number: Index No. 650713/2021
Judge: Debra James
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. DEBRA JAMES**

**PART 59**

*Justice*

-----X

STEPHEN DONHEISER, MICHAEL DONHEISER, and  
LYNN CHAMBERLIN,

Plaintiffs,

INDEX NO. 650713/2021

MOTION DATE 07/13/2022

MOTION SEQ. NO. 001 002

- v -

HEALTH INSURANCE PLAN OF NEW YORK, INC.,

Defendant.

**DECISION + ORDER ON  
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 19, 20

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

were read on this motion to/for DISMISS.

ORDER

Upon the foregoing documents, it is

ORDERED that defendant's motion to dismiss the original complaint (motion seq. no 001) is dismissed, as moot per defendant's withdrawal of such motion (NYSCEF Doc No 20) upon plaintiffs' service of an amended complaint; and it is further

ORDERED that the defendant's motion to dismiss the amended complaint pursuant to CPLR § 3211(a)(1) and (7) (motion seq no. 002) is granted and the complaint is dismissed in its entirety against the defendant, with costs and disbursements to defendant

as taxed by the Clerk of the Court, and the Clerk is directed to enter judgment accordingly in favor of defendant.

DECISION

CPLR 3014 states, in pertinent part: "Separate causes of action or defenses shall be separately stated and numbered." Plaintiffs' amended complaint does not separate their various causes of action. Instead, in a narrative fashion, such pleading clearly sets forth plaintiffs' frustration and consternation about their struggle to secure health insurance benefits coverage under plaintiff's wife plan for plaintiff son's residential mental health treatment, to which, ultimately, they were found to be entitled, and received. However, wanting from such allegations is any legally cognizable claim for damages.

With respect to plaintiffs' claim for statutory interest pursuant to CPLR § 5004 "Rate of Interest", this court agrees with defendant that such section by its clear language applies to interest on a judgment. As plaintiffs fail to allege that any judgment was entered with respect to the Assurance of Discontinuance No. 14-031 (NYSCEF Doc No 25) (and/or the duplicate copy of such Assurance [NYSCEF Doc No 30]), let alone a monetary judgment in their favor, the claim for such interest lacks merit. The decisions in neither Kellman v Mosley, 60 AD3d 457 (1<sup>st</sup> Dept 2009), modifying 2008 NY Slip Op 30509(U), nor Love

v State of New York, 78 NY2d 540 (1991), upon which plaintiffs rely, are to the contrary. Such opinions discuss CPLR 5002, which provides for prejudgment interest, from the date liability is determined until the date that judgment is entered, thereby presupposing the entry of a judgment. CPLR 5004, under which plaintiffs seek damages of 9% per annum, applies to interest from the date of entry of the judgment until such judgment is paid.

Likewise, plaintiffs state no meritorious claim pursuant to Insurance Law § 3224-a, because plaintiffs allege, in pertinent part, "Except for the delay in notifying us of the right to file a claim and a delay of five months and 15 days in getting our second check, our claims were processed in a timely manner."

Moreover, the irrefutable evidence of the Assurance of Discontinuance, and the terms therein, establish, as a matter of law, that, pursuant to Insurance Law § 3224-a(b) "the obligation of [defendant] . . . to pay a claim or make a payment for health care services rendered [was] not reasonably clear due to a good faith dispute regarding the . . . the benefits covered under a contract or agreement, or the manner in which services were accessed or provided [here mental health services provided and accessed in a residential setting]". For example, the Assurance of Discontinuance No. 14-031 (NYSCEF Doc No 25, p 18) states, in pertinent part:

"NOW, WHEREAS, Emblem neither admits nor denies the Attorney General's findings in Paragraphs 8 through 46 above; and

WHEREAS, access to adequate behavioral health treatment is essential for individual and public health; and

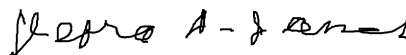
WHEREAS, Emblem has cooperated with the OAG's investigation; and

WHEREAS, the Attorney General is willing to accept the terms of this Assurance under Executive Law Section 63(15) and to discontinue his investigation".

Plaintiffs' allegations of negligence are also insufficient, as they set forth no duty of defendant that is independent of promises defendant made under the subject health insurance agreement. Here, plaintiffs are "merely seeking to enforce [their] bargain". See New York University v Continental Ins Co, 87 NY2d 308, 316 (1995).

As plaintiffs have not stated legally cognizable claims with respect to the breach of any contract, their claim for punitive damages fails as well. See Samovar of Russia Jewelry Antique Corp v Generali the General Ins Co of Trieste and Venice, 102 AD2d 279 (1<sup>st</sup> Dept 1984).

To the extent that plaintiffs assert a conspiracy to deprive plaintiff son of mental health care insurance benefits between defendant and non-party New York State Department of Financial Services, such claim is insufficient as it does not allege with the requisite specificity "an act in concert to inflict an unconstitutional injury." See Naegele v Fox, 206 AD3d 1558, 1559-1560 (4<sup>th</sup> Dept 2022).



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<u>8/4/2022</u>				<u>DEBRA JAMES, J.S.C.</u>
<b>DATE</b>				
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/> REFERENCE