

Matter of State Farm Mut. Auto. Ins. Co. (Barrett)
2023 NY Slip Op 35128(U)
December 15, 2023
Supreme Court, Bronx County
Docket Number: Index No. 807902/2023E
Judge: Veronica G. Hummel
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, IAS PART 20**

In the Matter of the Application of the STATE FARM
MUTUAL AUTOMOBILE INSURANCE COMPANY,

Petitioner,

For an Order staying the arbitration attempted to be had
by ANDRE C. BARRETT,

Respondent,

and

FATUMATA BAYO and GEICO INDEMNITY
COMPANY,

Proposed Additional Respondents

Index No. 807902/2023E

HON. VERONICA G. HUMMEL, A.J.S.C.

Seq. No. 1

DECISION/ORDER/JUDGMENT

In accordance with CPLR 2219(a), the decision herein is made upon consideration of all papers filed in NYSCEF in connection with petitioner STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S motion (Seq. No. 1) seeking: (1) an order, pursuant to CPLR 3025(b), granting State Farm leave to add FATUMATA BAYO and GEICO INDEMNITY COMPANY as additional respondents in this proceeding; and (2) an order, pursuant to CPLR § 7503, permanently staying the arbitration sought by respondent ANDRE C. BARRETT on the ground that the adverse vehicle was insured, or in the alternative, temporarily staying the arbitration pending a framed-issue hearing on the issue of whether the adverse vehicle was insured and whether respondent qualifies for uninsured motorist insurance by petitioner, or, in the alternative, should arbitration proceed, that respondent be directed to appear for deposition and medical examination, and provide all diagnostic films, no-fault files and medical records before arbitration.

Respondent alleges that while traveling in a vehicle insured by State Farm, he was injured in a car accident on May 11, 2020. Respondent alleges that the car that struck the State Farm vehicle and fled the scene was a vehicle with license plate number HCU8930 (the alleged adverse vehicle). Respondent avers that he is not certain that he correctly recorded the correct license plate

number for the vehicle that hit his car.

The vehicle bearing the provided license plate number is a 2006 Ford owned by Proposed Additional Respondent Fatumata Bayo.

Geico Indemnity Company insured the vehicle matching the license description. On July 27, 2020, Geico issued a disclaimer for the liability claim alleging that the insured alleged adverse vehicle was not responsible for the accident as the relevant vehicle was parked in a garage at the time of the accident.

Respondent served a demand for arbitration on May 9, 2023.

State Farm then commenced this proceeding on May 22, 2023.

In support of the motion, State Farm submits a petition that is verified by an attorney, an attorney affirmation, a copy of the demand for arbitration, the State Farm insurance policy, an uncertified copy of the police report, a copy of the DMV date base printout, and discovery demands. As the police report is uncertified, it is not competent evidence and will not be considered by the court. *Yassin v. Blackman*, 188 A.D.3d 62 (2d Dep't 2020); *Country-Wide Insurance Company v. Lobello*, 186 A.D.3d 1213 (2d Dep't 2020). State Farm also submits an attorney affirmation in reply, and pleadings from a separate action.

In opposition respondent submits an attorney affirmation, a copy of the denial letter, caselaw and a personal affidavit.

That part of the motion that seeks a temporary stay of the arbitration pending a framed issue hearing on the issue of whether the adverse vehicle was insured and whether respondent qualifies for uninsured motorist insurance by petition is denied.

The party seeking a stay of arbitration has the burden of showing the existence of sufficient evidentiary facts to establish a preliminary issue which would justify the stay. *Travelers Personal Ins. Co. v. Hanophy-Ryan*, 200 A.D.3d 695 (2d Dep't 2021), quoting *Matter of Government Empls. Ins. Co. v. Tucci*, 157 A.D.3d 679 (2d Dep't 2018). Only thereafter does the burden shift to the party opposing the stay to rebut the *prima facie* showing. *Matter of Merchants Preferred Ins. Co. v. Waldo*, 125 A.D.3d 864 (2d Dep't 2015). Here, to meet its initial burden, the petitioner was required to identify the alleged offending vehicle and show that it was, in fact, insured at the

time of the accident. *Matter of Hertz Vehs., LLC. v. Monroe*, 138 A.D.3d 847 (2d Dep't 2016); see *Matter of Farmers Ins./Truck Ins. Exch. V. Terzulli*, 112 A.D.3d 628 (2d Dep't 2013).

Movant's documents are insufficient to make the required showing. It is well settled law that an attorney's affirmation that is not based on personal knowledge or supported by documentary evidence is of no probative value. *Matter of Government Empls. Ins. Co. v. Tucci*, 157 A.D.3d 679 (2d Dep't 2018); *Nerayoff v. Khorshad*, 168 A.D.3d 866 (2d Dep't 2019). The petition is verified by an attorney with no personal knowledge of the facts alleged. As the allegations of facts in the petition are based upon a review of a file and not by someone with personal knowledge of the facts, it is insufficient to establish its merits. *First Franklin Fin. Corp. v. Alfau*, 157 A.D.3d 863, 865 (2d Dep't 2018). Accordingly, movant's papers contain no sworn allegations of fact by anyone with personal knowledge of the facts asserted therein.

The demand for arbitration does not provide evidentiary support for either a permanent or temporary stay of arbitration. While the DMV records may establish that s vehicle was insured by Geico and owned by Bayo, it is not evidence that Bayo's vehicle was in the accident. As stated, the uncertified police accident report is inadmissible. *Rosa v. Gordils*, 211 A.D.3d 1060, 1061 (2d Dep't 2022); *Yassin v. Blackman*, 188 A.D.3d 62 (2d Dep't 2020).

Hence petitioner, who does not submit a certified police report, fails to present competent evidence to show that the alleged adverse vehicle was involved in the accident. *In re State Farm Fire and Cas. Co. v. Gaillard*, 2022 WL 4287515 (Sup. Ct. New York County 2022). An issue of fact is not therefore raised and the motion is denied regardless of the sufficiency of the opposing papers. *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985); *In the matter of the application of Government Employees Insurance Company to State Arbitration v. Enriquez*, 2023 WL 335484 (Sup. Court Kings County 2023); *Progressive Specialty Insurance Company v. Guzmanino*, 2018 WL 2464103 (Sup. Ct. New York County 2018); *In the Matter of United Services Automobile Association v. Collins*, 78 Misc. 3d 1226(A) (Sup. Ct. Kings County 2023) .

As for the request for a temporary stay of the arbitration pending the completion of respondent's depositions and medical examinations, and the exchange of duly executed authorizations for respondent's no-fault file, employment records, and medical record, it is granted on without opposition. *Government Employees Insurance Company v. Eser*, 215 A.D.3d 837 (2d Dep't 2023); *Matter of Govt. Employees Ins. Co. v. Mendoza*, 69 A.D.3d 623 (2d Dep't 2010).

In light of the findings herein, the part of the petition that seeks an order, pursuant to CPLR 3025(b), granting petitioner leave to add Bayo and Geico, as additional respondents in this proceeding is denied as moot.

The court has considered the additional contentions of the parties not specifically addressed herein. To the extent any relief requested by either party was not addressed by the court, it is hereby denied. Accordingly, it is hereby

ORDERED that the part of petitioner STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S (Seq. No. 1) motion that seeks an order, pursuant to CPLR 3025(b), granting petitioner leave to add FATUMATA BAYO and GEICO INDEMNITY COMPANY, as additional respondents is denied; and it is further

ORDERED that the part of the motion (Seq. No. 1) that seeks an order, pursuant to CPLR 7503, permanently staying the arbitration sought by respondent ANDRE C. BARRETT, on the ground that the relevant adverse vehicle was insured is denied; and it is further

ORDERED that the part of the motion (Seq. No. 1) that seeks an order, pursuant to CPLR 7503, temporarily staying the arbitration pending a framed-issue hearing on the issue of whether the relevant adverse vehicle was insured is denied; and it is further

ORDERED that the part of the motion (Seq. No. 1) that seeks an order, pursuant to CPLR 7503, temporarily staying the arbitration pending the submission by respondent to depositions and medical examinations, and the exchange of duly executed authorizations for medical records before arbitration is granted without opposition; and it is further

ORDERED that respondent shall produce the required medical authorizations, to the extent not already exchanged, by January 15, 2024; and it is further

ORDERED that the depositions and physical examinations of respondent shall be noticed, conducted, and completed by April 1, 2024; and it is further

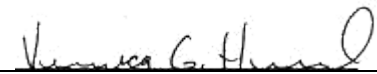
ORDERED and ADJUDGED that the temporary stay will expire without further court order on April 1, 2024; and further it is

ORDERED that petitioner shall serve a copy of this decision on the proposed additional respondents and the arbitrator by January 15, 2024 by regular and overnight mail, and upload an affidavit of service reflecting the same; and it is further

ORDERED that the petition is dismissed.

This constitutes the decision, order, and judgment of the Court.

Dated: December 15, 2023

Hon. 

HON. VERONICA G. HUMMEL, A.J.S.C.

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| 1. CHECK ONE..... | ☒ CASE DISPOSED IN ITS ENTIRETY | CASE STILL ACTIVE |
| 2. MOTION IS..... | ☐ GRANTED ☐ DENIED | ☒ GRANTED IN PART ☐ OTHER |
| 3. CHECK IF APPROPRIATE..... | ☐ SETTLE ORDER ☐ SUBMIT ORDER | ☐ SCHEDULE APPEARANCE |
| | ☐ FIDUCIARY APPOINTMENT | ☐ REFEREE APPOINTMENT |