

Nasrinpay v State Farm Mut. Auto. Ins. Co.

2024 NY Slip Op 32443(U)

April 24, 2024

Civil Court of the City of New York, Kings County

Docket Number: Index No. CV-731811-18/KI

Judge: Babatunde I. Akowe

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS PART 41
HON. BABATUNDE AKOWE

Index No. CV-731811-18/KI

JOHN A. NASRINPAY 2,
a/a/o DAVIS, KIRK,

Plaintiff,

Motion Cal. # 113/114
Seq. # 1 + 2

DECISION AND ORDER

Recitation, as required by CPLR §2219(a) of the papers considered in review of this Motion:

Papers

Motion and Affidavits Annexed1-2
Cross-Motion and Affidavits Annexed3-4
Opposition Affidavits/Reply5
Exhibits..... _____
Other..... _____

-against-

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

Upon the foregoing cited papers, the Decision/Order on Defendant’s Motion To Dismiss Complaint and for Summary Judgment and Plaintiff’s Cross-Motion for Summary Judgment are decided as follows:

Plaintiff’s Motion is GRANTED as Defendant’s request for the initial EUO request to Plaintiff (01/19/2018) had been sent more than 30 days after Defendant had received the claims at issue (11/20/17) and, therefore, the request was a nullity as to these claims. *See Neptune Med. Care, P.C. v Ameriprise Auto & Home Ins.*, 48 Misc.3d 139(A) (App. Term, 2d Dep’t, 2015). As the Appellate Term of this Department recognized in *Neptune*, “[p]ursuant to the No-Fault Regulations, any additional verification required by the insurer to establish proof of claim shall be requested within 15 business days of receipt of the NF-3.” *Id.* (internal quotation marks and brackets omitted, italics in original), *citing to* 11 NYCRR § 65-3.5(b). Further, as here, “Defendant did not request [the additional verification] until more than 15 business days, and even more than 30 calendar days, after it had received the bills at issue.” *Id.* (internal citation omitted). Thus, as appellate Term concluded with respect to the bills at issue in *Neptune*, the subject verification request in this matter was “untimely” with respect to the claims at issue. *Id.* *See also Beacon Acupuncture, P.C. v. Hertz Claim Mgt.*, 66 Misc.3d 130(A) (App. Term, 2d Dep’t, 2019); *Bronx Med. Diagnostic, P.C. v. Hereford Ins. Co.*, 65 Misc.3d 146(A) (App. Term, 2d Dep’t, 2019); *A.C.*

Med., P.C. v. Ameriprise Ins. Co., 54 Misc.3d 127(A) (App. Term, 2d Dep't, 2016); Daily Med. Equip. Distrib. Ctr., Inc. v. MVAIC, 53 Misc.3d 148(A) (App. Term, 2d Dep't, 2016); Renelique v. Utica Mut. Ins. Co., 53 Misc.3d 141(A) (App. Term, 2d Dep't, 2016); Great Health Care Chiropractic, P.C. v. Travelers Ins. Co., 49 Misc.3d 145(A) (App. Term, 2d Dep't, 2015). More recently, the Appellate Division has adopted the reasoning by the Appellate Term in Neptune and has held that “[w]here, as here, the *initial request for an examination under oath is sent more than 30 days after receipt of the claim, the request is a nullity* (see Excel Prods., Inc. v. Farmington Cas. Co., 71 Misc.3d 137(A) (App. Term, 2d Dep't, 2021), and the insurer’s failure to timely notice the examination under oath is not excused by 11 NYCRR 65-3.5(p) (see American Transit Ins. Co. v. Foster, 2019 NY Slip Op 30746(U) (Sup. Ct., New York County, 2019) (Freed, J.); cf. Z.M.S. & Y. Acupuncture, P.C. v. Geico Gen. Ins. Co., 56 Misc.3d 926, 930 (Civ. Ct., Kings County, Montelione, J.).” (Emphasis added). Moreover, Defendant’s affirmation attesting to the EUO No-Show refers to dates not stated in the EUO letters and therefore, Defendant failed to establish the EUO non-appearances in any event.

Specifically, Defendant’s EUO letters appear untimely as they were sent later than thirty days after the receipt of the bills at issue. Accordingly, Plaintiff is to enter Judgment for the amount of \$567.80 plus statutory interest, statutory attorney fees, costs, fees and disbursements.

This constitutes the Decision and Order of the Court.

Date: April 24, 2024


JUDGE, CIVIL COURT, KINGS COUNTY
HONORABLE BABATUNDE I. AKOWE

Counsel for Plaintiff- Oleg Rybak, Esq. / *OR*

Counsel for Defendant – Sarah V Cohenson, Esq. / *SC*

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