

Hereford Ins. Co. v Advanced Life Servs., Inc.
2025 NY Slip Op 31418(U)
April 21, 2025
Supreme Court, New York County
Docket Number: Index No. 152322/2022
Judge: Leslie A. Stroth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

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INDEX NO. 152322/2022

HEREFORD INSURANCE COMPANY,

03/18/2025,

Plaintiff,

MOTION DATE 03/18/2025

- v -

MOTION SEQ. NO. 001 001

ADVANCED LIFE SERVICES, INC., BRONX MEDICAL DIAGNOSTIC, PC, CPM MED SUPPLY INC., FAMILY HEALTH NP, PC, HAZELWOOD MEDICAL PC, LAILA COLLINS, LUMAX, INC., METROPOLITAN MEDICAL & SURGICAL, PC, NETRX INC., NEW YORK REHAB CARE PT, PC, SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC, SENIOR CARE 911, SOUTH BRONX CHIROPRACTIC, PC, SUSAN J POLINO, TERRA CHIROPRACTIC, PC, WIZARD COMPUTER SERVICES, PC, ROSA MILIAN, SHAKH MIKHAIL

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 52

were read on this motion to/for JUDGMENT - DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 001) 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 52

were read on this motion to/for JUDGMENT - DEFAULT

Plaintiff Hereford Insurance Company alleges that on September 1, 2021, claimant-defendants Rosa Milian and Shakh Mikhail were passengers in a vehicle insured by Hereford when it was struck by another vehicle (Exh A & B). Hereford assigned claim number 95037 to all No-Fault claims (Exh C). Plaintiff moves here for a default judgment, pursuant to CPLR 3215, against defendants BRONX MEDICAL DIAGNOSTIC, PC, FAMILY HEALTH NP, PC, HAZELWOOD MEDICAL PC, LUMAX, INC., METROPOLITAN MEDICAL & SURGICAL, PC, NETRX INC., NEW YORK REHAB CARE PT, PC, SEDATION VACATION

PERIOPERATIVE MEDICINE, PLLC, SENIOR CARE 911, SOUTH BRONX
CHIROPRACTIC, PC, TERRA CHIROPRACTIC, PC, WIZARD COMPUTER SERVICES,
PC, ROSA MILIAN, and SHAKH MIKHAIL.

An application for a default judgment must be supported with “proof of service of the summons and complaint [,] ... proof of the facts constituting the claim, [and] the default” (CPLR 3215 [f]). In addition to furnishing proof of service, the plaintiff must offer “some proof of liability ... to satisfy the court as to the prima facie validity of the uncontested cause of action” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). “The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” (*id.*). “[A] complaint verified by someone or an affidavit executed by a party with personal knowledge of the merits of the claim” satisfies this statutory requirement (*Beltre v Babu*, 32 AD3d 722, 723 [1st Dept 2006]). Here, plaintiff provided proof of service upon the defaulting parties (Exh F).

In support of the instant application, plaintiff submitted, *inter alia*, an affidavit by Joronda McBurnie, a No-Fault Claims Supervisor for Hereford, who stated as follows (Exh A):

11. To date, the Medical Provider Defendants have submitted thousands of dollars in No-Fault claims as the alleged assignees of the Claimants, exclusive of interest and attorney’s fees.

12. In addition to the sheer magnitude of the claims submitted, the claim’s legitimacy was questionable because:

- It was a hit-and-run loss.
- The injuries appeared to be exaggerated compared to the severity of the accident, given one claimant treating far more extensively than the other.

13. These circumstances surrounding the collision raised a strong possibility that the alleged injuries of the Claimants and any subsequent treatment by the Medical Provider Defendants were not causally related to the collision, and/or that the collision was not an insured incident under the No-Fault Regulations...

16. MILIAN appeared for her EUO; however, her testimony raised additional issues as to the legitimacy and medical necessity of the purported medical treatments, which further contributed to a strong possibility that the Claimants’ submitted treatments were not causally related to the alleged collision, were exaggerated, and/or did not arise from an insured incident...

17. Despite due demand, defendant MIKHAIL failed to appear for duly scheduled EUOs on two occasions, on November 30, 2021, and January 5, 2022, which breached a condition precedent to coverage under the No-Fault Regulations, and Hereford has denied his claims on that basis. See statements on the record documenting MIKHAIL's EUO no-shows annexed as Exhibit "G".

18. In addition, on January 26, 2022, Hereford duly forwarded MILIAN her EUO transcript for execution and notarization to the address listed on her NF-2 and to her counsel, Khavinson & Associates, PC, at 45 Broadway, Suite 720, New York, NY 10006. See MILIAN EUO transcript subscription request letters annexed as Exhibit "F".

19. Neither MILIAN nor her counsel returned an executed and notarized EUO transcript.

20. On March 7, 2022, Hereford sent a second request to MILIAN and her counsel to execute and notarize MILIAN's EUO transcript. See MILIAN EUO transcript subscription request letters annexed as Exhibit "F".

21. Neither MILIAN nor her counsel returned an executed and notarized EUO transcript

Defendants failed to file any opposition. In consideration of the foregoing, plaintiff's motion for default judgment against defendants is granted.

22. MILIAN failed to execute, notarize, and return her EUO transcript, breaching a condition precedent to coverage and Hereford has denied MILIAN's claims on that basis.

23. Based on the above and its due investigation, Hereford maintains a founded belief that the Claimants' alleged injuries and any subsequent No-Fault treatment submitted by the Medical Provider Defendants were not causally related to the September 1, 2021, collision and/or did not arise from an insured event, and Hereford has denied all claims on that basis.

Plaintiff provided affidavits of service as proof of service of the Summons and Complaint and the instant motion papers (Exh I and Nyscef doc 48). Defendant has failed to file any opposition.

Accordingly, it is hereby

ORDERED, plaintiff's motion for default judgment is granted against defendants BRONX MEDICAL DIAGNOSTIC, PC, FAMILY HEALTH NP, PC, HAZELWOOD MEDICAL PC, LUMAX, INC., METROPOLITAN MEDICAL & SURGICAL, PC, NETRX INC., NEW YORK REHAB CARE PT, PC, SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC, SENIOR CARE 911, SOUTH BRONX CHIROPRACTIC, PC, TERRA CHIROPRACTIC, PC, WIZARD COMPUTER SERVICES, PC, ROSA MILIAN, and SHAKH MIKHAIL; and it is further

ORDERED, that plaintiff is granted a declaration that it has no obligation to pay the Defaulting Defendants' claims, arising from the alleged September 1, 2021, collision under claim number 95037, including any and all NoFault claims; any and all uninsured, underinsured, supplementary-uninsured, or supplementary-uninsured motorist-benefit claims; any and all medical-payment claims; any and all property damage claims; any and all bodily-injury-liability benefits.

The foregoing constitutes the decision and order of the Court.

4/21/2025
DATE

Leslie A. Stroth
HON. LESLIE A. STROTH
J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE