

Matter of Hereford Ins. Co. v Perez

2025 NY Slip Op 33962(U)

October 10, 2025

Supreme Court, New York County

Docket Number: Index No. 651395/2025

Judge: Alexander M. Tisch

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ALEXANDER M. TISCH PART 18

Justice

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INDEX NO. 651395/2025

IN THE MATTER OF THE APPLICATION FOR AN ORDER
STAYING THE ARBITRATION BETWEEN HEREFORD
INSURANCE COMPANY,

MOTION DATE 03/12/2025

MOTION SEQ. NO. 001

Petitioner,

- v -

**DECISION + ORDER ON
MOTION**

KARYNNE PEREZ,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for STAY.

Upon the foregoing documents, petitioner Hereford Insurance Company (Hereford) moves, pursuant to CPLR 7503, to permanently stay the uninsured motorist arbitration demanded by respondent Karynne Perez or temporarily stay said arbitration and set this matter down for a framed issue hearing on the issues raised herein, or in the alternative, should the matter proceed to arbitration, direct the exchange of pre-arbitration discovery. Respondent Karynne Perez opposes the petition pursuant to CPLR 7503.

“[A] party who has not participated in the arbitration and who has not made or been served with an application to compel arbitration, may apply to stay arbitration on the ground that a valid agreement was not made or has not been complied with” (CPLR 7503 [b]). “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” (*Matter of Government Empls. Ins. Co. v. Tucci*, 157 AD3d 679, 680 [2d Dept 2018] [internal quotation marks omitted]).

“Thereafter, the burden shifts to the party opposing the stay to rebut the prima facie showing” (*Matter of Merchants Preferred Ins. Co. v. Waldo*, 125 AD3d 864, 865 [2d Dept 2015]).

“Where the covenant to arbitrate is made subject to conditions precedent, the existence of such conditions when disputed is an issue for the court” (*Rosenbaum v Am. Sur. Co. of New York*, 11 NY2d 310, 314 [1962]). “If issues of fact exist, the court must temporarily stay the arbitration and hold a hearing before it can decide whether the arbitration should proceed or be permanently stayed” (*State Farm Ins. Co. v White*, 2015 NY Slip Op 31476[U] [Sup Ct, New York County 2015]). “Where a triable issue of fact is raised, the Supreme Court, not the arbitrator, must determine it in a framed-issue hearing, and the appropriate procedure under such circumstances is to temporarily stay arbitration pending a determination of the issue” (*Hertz Corp. v. Holmes*, 106 AD3d 1001, 1003 [2d Dept 2013] [internal citations omitted]).

Petitioner Hereford contends that respondent Karynne Perez failed to satisfy a condition precedent to receiving uninsured motorist benefits. Specifically, that “[t]he insured or someone on the insured’s behalf shall have reported the accident within 24 hours or as soon as reasonably possible to a police, peace or judicial officer or to the Commissioner of Motor Vehicles” (NY St Cts Elec Filing [NYSCEF] Doc No. 6, exhibit B to petition, at 29, 30) and Karynne Perez did not provide timely notice.

In rebuttal to Hereford’s assertion, respondent Karynne Perez provides an MV-104 form (NYSCEF Doc No. 15, exhibit 3 to opp to mot). The MV-104 is accompanied with a letter, dated February 21, 2025, addressed to the New York State Department of Motor Vehicles. However, respondent did not provide evidence the letter and MV-104 form were mailed to the New York State Department of Motor Vehicles. Further, the alleged accident occurred on January 24, 2025, which means the alleged notice was provided more than 24 hours after the alleged accident.

Therefore, there is an issue of fact as to whether respondent as the insured, or someone on the insured's behalf, reported the accident as soon as reasonably possible to a police, peace or judicial officer or to the Commissioner of Motor Vehicles. (see *Matter of Country Wide Ins. Co. (Russo)*, 201 AD2d 368, 370 [1st Dept 1994] [“[c]ase law reveals that the courts have consistently afforded a very liberal interpretation to the notice requirement”]).

Accordingly, it is hereby,

ORDERED that the petition to stay arbitration, motion sequence no. 001, is GRANTED IN PART, to the extent that a framed issued hearing is directed as to whether the respondent, Karynne Perez, satisfied the condition precedent of timely notifying the police, peace or judicial officer or to the Commissioner of Motor Vehicles of the accident, and the arbitration is stayed pending such hearing; and it is further

ORDERED that a Judicial Hearing Officer (“JHO”) or Special Referee shall be designated to hear and report to this Court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose: whether respondent, Karynne Perez, satisfied the condition precedent of timely notifying the police, peace or judicial officer or to the Commissioner of Motor Vehicles within 24 hours or as soon as reasonably possible; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 60 Centre St. or spref@nycourts.gov) for placement at the earliest possible date upon which the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the “References” link under “Courthouse Procedures”), shall assign this matter to an available JHO/Special Referee to hear and report as specified above; and it is further


ORDERED that counsel shall immediately consult one another and counsel for petitioner shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or email, an Information Sheet (which can be accessed at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referees' Part in accordance with the Rules of that Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320[a]) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts.

This constitutes the Decision and Order of the court.

<u>10/10/2025</u> DATE	 ALEXANDER M. TISCH, J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE