

**State Farm Mut. Auto. Ins. Co. v Fernandez**

2025 NY Slip Op 34322(U)

October 16, 2025

Supreme Court, New York County

Docket Number: Index No. 160885/2024

Judge: James G. Clynes

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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. JAMES G. CLYNES PART 39M

Justice

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff,

INDEX NO. 160885/2024

MOTION DATE 06/04/2025

MOTION SEQ. NO. 002

- v -

JUNIOR FERNANDEZ, RAUL PENA, ACCU REFERENCE MEDICAL LAB, LLC, ALEXANDER ZHURAVKOV, ATLANTIC MEDICAL & DIAGNOSTIC, PC, BEST CARE PHARMACY OF NEW YORK, INC, BODY ALIGNMENT PHYSICAL THERAPY PC, CITIMED COMPLETE MEDICAL CARE PC, CITI MED SUPPLY, INC, DELTA K CORP, DIANA BEYNIN, DR. JUN HEE LEE CHIROPRACTIC PC, EDEN MEDICAL PC, ENGLINTON MEDICAL, PC, FAST CARE MEDICAL DIAGNOSTICS PLLC, FUSION HEALTHCARE SOLUTIONS, LLC, GAETAN JEAN MARIE, FAMILY HEALTH NP, PLLC, JAMAICA SUPPLIES 1 INC, JTK CHIROPRACTIC CARE, PC, KINGS ANESTHESIA, PC, MICHAEL MURRAY, MICHAEL VARGAS, MODERN RX PHARMACY, INC, NOVAR PT, PC, PARS MEDICAL, PC, PDA NY CHIROPRACTIC, PC, PERFORMANCE MONITORING ASSOCIATES LLC, REGO SUPPLIES INC, REHAB WAY PT PC, RIDGEWOOD MEDICAL SERVICES, PC, STAY WELL CHIROPRACTIC, PC, SUPPLIES MADE EASY INC, WESTCHESTER RADIOLOGY & IMAGING, PC

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, it is ordered that plaintiff's motion for an Order granting default judgment in plaintiff's favor and against the non-answering defendants is granted in part as set forth below. Junior Fernandez and Raul Pena, claimants for the subject insurance policy, were involved in a motor vehicle accident. Following the provision of medical services, the medical provider defendants submitted claims to plaintiff State Farm Mut. Auto. Ins. Co. citing the claimant's breach of the policy terms, plaintiff denied coverage to defendants. Plaintiff filed

suit seeking declaratory judgment that plaintiff is not required to reimburse defendants for no-fault claims arising out of the subject accident (NYSCEF 1). Plaintiff now moves for an order pursuant to CPLR § 3215 granting default judgment against the defaulting defendants for failure to timely answer or appear (NYSCEF 36).

“A party seeking a default judgment must submit proof of service of the summons and complaint and ‘proof of the facts constituting the claim, the default and the amount due.’ To demonstrate ‘facts constituting the claim,’ the movant need only proffer proof sufficient ‘to enable a court to determine that a viable cause of action exists.’ The movant may do so either by submission of an affidavit of merit or by verified complaint, if one has been properly served.” Bigio v. Gooding, 213 A.D.3d 480, 481 (1st Dept 2023) (citations omitted).

Here, plaintiff properly demonstrated proof of service as to most of the defendants, as evidenced by the affidavits of service (NYSCEF 2, 5-9, 11-19, 21-26, and 28-30). See LF USA, Inc v. The Eurostyle Group, Ltd., 2014 WL 344048, at \*2 (Sup. Ct. New York 2014) (“The affidavit of service is *prima facie* evidence that defendant was properly served.”); Hyman v. 400 W. 152nd St. Hous. Dev. Fund Corp., 159 A.D.3d 606, 606–07 (1st Dept 2018) (holding there was a “presumption of proper service created by the affidavit of service reflecting service through the Secretary of State.”); See CPLR 3215, CPLR 311, BCL § 306. Service was also proper as to defendant Michael Murray, MD, as plaintiff’s process server affirmed the summons and complaint was left with a receptionist at defendant’s place of business and mailed five days later (NYSCEF 32). See Edan v. Johnson, 117 A.D.3d 528, 529 (1st Dept 2014).

However, the court cannot find service was proper as to defendant Diana Beynin, DC. Plaintiff’s process server affirmed defendant Diana Beynin, DC could not be located with due diligence, and so service of the summons and complaint was affixed to this defendant’s door.

Specifically, the process server called on three weekdays—December 2, 2024, around 5PM, on December 4, 2024, around 9AM, and December 5 around 5PM (NYSCEF 10). “The diligence requirement of CPLR 308(4) should be strictly observed, given the reduced likelihood that a summons served pursuant to that section will be received. Here, [these] attempts at service were made [at times] when working individuals cannot reasonably be expected to be home . . . Since the plaintiff] failed to comply with the due diligence requirement of CPLR 308(4), the court did not acquire personal jurisdiction over [the defendant].” Bleier v. Heschel, 128 A.D.2d 662, 662 (2d Dept 1987) (internal citations omitted). See also Colonial Nat’l Bank, U.S.A. v. Jacobs, 188 Misc. 2d 87, 88-92 (Civ. Ct. New York 2000) (finding the requirements of CPLR 308 were not satisfied where, on three successive weekdays, once before 8AM and twice after 6PM, defendant’s apartment was telephoned, and the papers were affixed to the outer door of a multi-resident dwelling); Spath v. Zack, 36 A.D.3d 410, 413 (1st Dept 2007) (“The three previous attempts to [effect service] were insufficient to satisfy the due diligence requirement. None of these attempts were made on a weekend . . .”). Under these circumstances, given the failure to satisfy the due diligence requirement, plaintiff cannot seek default judgment against defendant Diana Beynin, DC, at this stage.

As such, plaintiff is entitled to seek default judgment against those defendants who failed to timely answer or appear: ACCU REFERENCE MEDICAL LAB, LLC, BEST CARE PHARMACY OF NEW YORK, INC., BODY ALIGNMENT PHYSICAL THERAPY P.C., CITI MED COMPLETE MEDICAL CARE P.C., CITI MED SUPPLY, INC., DELTA K CORP., DR. JUN HEE LEE CHIROPRACTIC P.C., EDEN MEDICAL P.C., ENGLINTON MEDICAL, P.C., FAST CARE MEDICAL DIAGNOSTICS PLLC, FUSION HEALTHCARE SOLUTIONS, PLLC, GAETAN JEAN MARIE, FAMILY HEALTH NP, PLLC, JAMAICA SUPPLIES 1 INC.,

JTK CHIROPRACTIC CARE, P.C., KINGS ANESTHESIA, P.C., MICHAEL MURRAY, M.D., NOVAR PT, P.C., PARS MEDICAL, P.C., PDA NY CHIROPRACTIC, P.C., PERFORMANCE MONITORING ASSOCIATES LLC, REGO SUPPLIES INC., REHAB WAY PT P.C., STAY WELL CHIROPRACTIC, P.C., SUPPLIES MADE EASY, P.C., and WESTCHESTER RADIOLOGY & IMAGING, P.C.

The timeline for this case is as follows: on February 19, 2024, the claimants were involved in a motor vehicle accident; on March 7, 2024, Pena submitted a no-fault application; on April 1, 2024, Fernandez submitted a no-fault application (NYSCEF 55); on May 3, 2024, plaintiff scheduled EUOs for both claimants on May 28, 2024 (NYSCEF 57). Despite rescheduling several times, both claimants repeatedly failed to appear (NYSCEF 53).

New York's insurance "regulations require an accident victim to submit a notice of claim to the insurer as soon as practicable and no later than 30 days after an accident. Next, the injured party or the assignee . . . must submit proof of claim for medical treatment no later than 45 days after services are rendered. Upon receipt of one or more of the prescribed verification forms used to establish proof of claim . . . an insurer has 15 business days within which to request 'any additional verification required by the insurer to establish proof of claim.' . . . Significantly, an insurance company must pay or deny the claim within 30 calendar days after receipt of the proof of claim. If an insurer seeks additional verification, however, the 30-day window is tolled until it receives the relevant information requested." Hosp. for Joint Diseases v. Travelers Prop. Cas. Ins. Co., 9 N.Y.3d 312, 317–18 (2007) (citations omitted). Here, the record shows plaintiff did not abide by the relevant timeframe.

Where both the insurer and the claimant failed to abide by the relevant no-fault regulations, that is, the insurer failed to timely schedule the EUO and the claimant failed to appear, some courts

have found the insurer is not entitled to relief. See Hertz Vehicles, LLC v. Charles Deng Acupuncture, P.C., 2016 WL 1222168, at \*2 (Sup. Ct. New York 2016) (“In no-fault cases such as this, involving the failure of a claimant to appear for an EUO, a default judgment will not be granted without proof that the EUO scheduling letters were mailed in accordance with the no-fault regulations.”); Hertz Vehicles, LLC v. Best Touch PT, P.C., 162 A.D.3d 617, 617–18 (1st Dept 2018). Similarly, courts in other departments have held an insurer is precluded from asserting nonappearance as a defense when the scheduling letters were not timely sent. See Westchester Med. Ctr. v. Lincoln Gen. Ins. Co., 60 A.D.3d 1045, 1045–47 (2d Dept 2009); Nationwide Affinity Ins. Co. of Am. v. Jamaica Wellness Med., P.C., 167 A.D.3d 192, 197–98 (4th Dept 2018). Nevertheless, to the extent the above caselaw is controlling, it appears to represent a minority position.

Indeed, it is well-settled that “the failure to disclaim coverage does not create coverage which the policy was not written to provide . . . .” Zappone v. Home Ins. Co., 55 N.Y.2d 131, 134 (1982). Therefore, this court must conclude that “[t]he failure to attend duly scheduled medical exams voids the policy ab initio. Accordingly, when [claimant] failed to appear for the requested medical exams, plaintiff had the right to deny all claims retroactively to the date of loss, regardless of whether the denials were timely issued . . . . There is no requirement to demonstrate that the claims were timely disclaimed since the failure to attend medical exams was an absolute coverage defense.” Am. Transit Ins. Co. v. Lucas, 111 A.D.3d 423, 424–25 (1st Dept 2013) (citations omitted). See also Hertz Vehicles, LLC v. Delta Diagnostic Radiology, P.C., 2015 WL 708610, at \*3 (Sup. Ct. New York 2015); Mapfre Ins. Co. of New York v. Manoo, 140 A.D.3d 468, 469–70 (1st Dept 2016); Hereford Ins. Co. v. Lida's Med. Supply, Inc., 161 A.D.3d 442, 442–43 (1st Dept 2018); PV Holding Corp. v. Hank Ross Med., P.C., 188 A.D.3d 429, 430 (1st Dept 2020).

Accordingly, it is hereby

ORDERED that plaintiff's motion for default judgment against defaulting defendants JUNIOR FERNANDEZ a/k/a JUNIOR FERNANDEZ FERMIN, RAUL PENA a/k/a PENA RAUL, ACCU REFERENCE MEDICAL LAB, LLC, P.C., BEST CARE PHARMACY OF NEW YORK, INC., BODY ALIGNMENT PHYSICAL THERAPY P.C., CITIMED COMPLETE MEDICAL CARE P.C., CITI MED SUPPLY, INC., DELTA K CORP., DIANA BEYNIN, DC, DR. JUN HEE LEE CHIROPRACTIC P.C., EDEN MEDICAL P.C., ENGLINTON MEDICAL, P.C., FAST CARE MEDICAL DIAGNOSTICS PLLC, FUSION HEALTHCARE SOLUTIONS, PLLC, GAETAN JEAN MARIE, FAMILY HEALTH NP, PLLC, JAMAICA SUPPLIES 1 INC., JTK CHIROPRACTIC CARE, P.C., KINGS ANESTHESIA, P.C., MICHAEL MURRAY, M.D., NOVAR PT, P.C., PARS MEDICAL, P.C., PDA NY CHIROPRACTIC, P.C., PERFORMANCE MONITORING ASSOCIATES LLC, REGO SUPPLIES INC., REHAB WAY PT P.C., STAY WELL CHIROPRACTIC, P.C., SUPPLIES MADE EASY, P.C., and WESTCHESTER RADIOLOGY & IMAGING, P.C, is GRANTED without opposition, and it is further

ORDERED, ADJUDGED, and DECLARED that defendants JUNIOR FERNANDEZ a/k/a JUNIOR FERNANDEZ FERMIN and RAUL PENA a/k/a PENA RAUL each breached a condition precedent to coverage under the No-Fault Regulation and the subject policy of insurance by failing to appear for examinations under oath on at least two occasions each, and it is further

ORDERED, ADJUDGED, and DECLARED that STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, owes no duty to pay any Mandatory Personal Injury Protection (No Fault) sums, monies, damages, awards, claims and/or benefits to JUNIOR FERNANDEZ a/k/a JUNIOR FERNANDEZ FERMIN, RAUL PENA a/k/a PENA RAUL, ACCU REFERENCE MEDICAL LAB, LLC, BEST CARE PHARMACY OF NEW YORK, INC.,

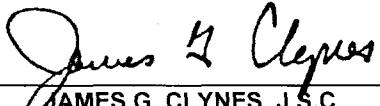
BODY ALIGNMENT PHYSICAL THERAPY P.C., CITIMED COMPLETE MEDICAL CARE P.C., CITI MED SUPPLY, INC., DELTA K CORP., DIANA BEYNIN, DC, DR. JUN HEE LEE CHIROPRACTIC P.C., EDEN MEDICAL P.C., ENGLINTON MEDICAL, P.C., FAST CARE MEDICAL DIAGNOSTICS PLLC, FUSION HEALTHCARE SOLUTIONS, PLLC, GAETAN JEAN MARIE, FAMILY HEALTH NP, PLLC, JAMAICA SUPPLIES 1 INC., JTK CHIROPRACTIC CARE, P.C., KINGS ANESTHESIA, P.C., MICHAEL MURRAY, M.D., NOVAR PT, P.C., PARS MEDICAL, P.C., PDA NY CHIROPRACTIC, P.C., PERFORMANCE MONITORING ASSOCIATES LLC, REGO SUPPLIES INC., REHAB WAY PT P.C., STAY WELL CHIROPRACTIC, P.C., SUPPLIES MADE EASY, P.C., and WESTCHESTER RADIOLOGY & IMAGING, P.C arising from the alleged automobile incident of February 19, 2024, under claim number 32-64H4-14S and any such lawsuits and/or arbitrations are hereby dismissed in accordance with this Order; and it is further

ORDERED that Clerk is directed to enter a judgment against the defaulting defendants JUNIOR FERNANDEZ a/k/a JUNIOR FERNANDEZ FERMIN, RAUL PENA a/k/a PENA RAUL, ACCU REFERENCE MEDICAL LAB, LLC, BEST CARE PHARMACY OF NEW YORK, INC., BODY ALIGNMENT PHYSICAL THERAPY P.C., CITIMED COMPLETE MEDICAL CARE P.C., CITI MED SUPPLY, INC., DELTA K CORP., DIANA BEYNIN, DC, DR. JUN HEE LEE CHIROPRACTIC P.C., EDEN MEDICAL P.C., ENGLINTON MEDICAL, P.C., FAST CARE MEDICAL DIAGNOSTICS PLLC, FUSION HEALTHCARE SOLUTIONS, PLLC, GAETAN JEAN MARIE, FAMILY HEALTH NP, PLLC, JAMAICA SUPPLIES 1 INC., JTK CHIROPRACTIC CARE, P.C., KINGS ANESTHESIA, P.C., MICHAEL MURRAY, M.D., NOVAR PT, P.C., PARS MEDICAL, P.C., PDA NY CHIROPRACTIC, P.C., PERFORMANCE MONITORING ASSOCIATES LLC, REGO SUPPLIES INC., REHAB WAY PT P.C., STAY

WELL CHIROPRACTIC, P.C., SUPPLIES MADE EASY, P.C., and WESTCHESTER RADIOLOGY & IMAGING, P.C.; and it is further

ORDERED that the action is severed and continued against the answering defendants (Atlantic Medical & Diagnostic, P.C. and Ridgewood Medical Services, P.C.).

This constitutes the Decision, Order and Judgment of the court.

10/16/25			
DATE			JAMES G. CLYNES, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
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