

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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BENZION LEBOVITS, as Trustee of  
the Weberman Family Irrevocable Life  
Insurance Trust,Plaintiff,  
-against-PHL VARIABLE INSURANCE  
COMPANY,

Defendant.

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**MEMORANDUM AND ORDER**  
Case No. 12-CV-6397 (FB) (RML)*Appearances:**For the Plaintiff:*IRA S. LIPSIUS, ESQ.  
DAVID BENHAIM, ESQ.  
Lipsius-Benham Law LLP  
80-02 Kew Gardens Road, Suite 1030  
Kew Gardens, NY 11415*For the Defendant:*PATRICK J. FEELEY, ESQ.  
Dorsey & Whitney LLP  
51 West 52nd Street  
New York, NY 10019**BLOCK, Senior District Judge:**

The Court previously held that the policy at issue in this case did not lapse, but conditioned entry of a declaratory judgment to that effect on a tender of the premium due. *See Lebovits v. PHL Variable Ins. Co.*, \_\_\_ F. Supp. 3d \_\_\_, 2016 WL 4194120, at \*3 (E.D.N.Y. Aug. 9, 2016). Although the parties were able to agree on the amount due—\$2,128,542.48—the insured refused to pay it. At a court appearance, the insured’s counsel stated that his client did not want to pay the premium until the time

to appeal had run because “the insurance company is going to take the \$2 million, and then we still won’t have coverage.” Tr. of Dec. 20, 2016, at 4.

As the Court explained, coverage would follow from entry of a judgment that the policy had not lapsed. *See id.* (“You have coverage. Once you comply with my order, you are covered.”). Were a higher authority to reverse that judgment, “[t]here are all sort[s] of remedies the Court can impose.” *Id.* at 5. Most obviously, the circuit court could condition its reversal on a return of the premium with interest. The Court then directed the insured to tender payment by December 22nd, clearly warning that failure to do so would result in dismissal of that case. *Id.* at 4 (“You are going to pay it up forthwith. Otherwise you are gone.”).

The insured did not comply, representing that it could not pay “without some assurance that the funds are not at risk.” Letter from Ira. S. Lipsius (Dec. 23, 2016). The Court has already given that assurance. Accordingly, the case is dismissed with prejudice.

**SO ORDERED.**

/S/ Frederic Block  
FREDERIC BLOCK  
Senior United States District Judge

Brooklyn, New York  
January 13, 2017