

Matter of Nationwide Ins. Co. v Hernandez
2012 NY Slip Op 31306(U)
May 11, 2012
Sup Ct, NY County
Docket Number: 112943/11
Judge: Barbara Jaffe
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

JAFFE BARBARA JAFFE
J.S.C.

Index Number : 112943/2011
NATIONWIDE MUTUAL INSURANCE
vs
HERNANDEZ, CHRISTOPHER
Sequence Number : 001
COMPEL OR STAY ARBITRATION

PART 5

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

CAL. # 99

The following papers, numbered 1 to _____, were read on this motion to/for _____
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s) 1
Answering Affidavits — Exhibits _____ | No(s) 2, 3, 4, 5
Replying Affidavits _____ | No(s) 6, 7

Upon the foregoing papers, it is ordered that this motion is

**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ~~ORDER~~ JUDGMENT**

FILED

MAY 16 2012

NEW YORK
COUNTY CLERK'S OFFICE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

Dated: 5/11/12
BARBARA JAFFE
J.S.C.
MAY 11 2012

BARBARA JAFFE
J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK : PART 5

-----X
 In the Matter of the Application of NATIONWIDE
 INSURANCE COMPANY,

Petitioner,

-against

For a Judgment Staying the Arbitration Commenced by
 CHRISTOPHER HERNANDEZ,

Respondent,

OCEAN HARBOR CASUALTY INSURANCE
 COMPANY, STATE FARM MUTUAL INSURANCE
 COMPANY, ELRAC INC., ELCO ADMINISTRATIVE
 SERVICE COMPANY, ENTERPRISE HOLDINGS,
 INC., SENTRY INSURANCE, LOUIS RODRIGUEZ,
 MALICK SOW, MOHAMED SILLAN, CHRISTINA H.
 ENDICOTT,

Proposed Additional Respondents.
 -----X

BARBARA JAFFE, JSC:

For petitioner:

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For State Farm/Endicott:

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 Jericho, NY 11753
 516-229-6000

For Hernandez:

Robert J. Greenstein, Esq.
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For Sentry:

Michael J. Pender, Esq.
 Hammill, O'Brien, *et al.*
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 PO Box 1306
 Syosset, NY 11791
 516-746-0707

Index No. 112943/11

Motion Date: 2/28/12

Motion Seq. Nos.: 001,

DECISION & JUDGMENT

FILED

MAY 16 2012

NEW YORK
 COUNTY CLERK'S OFFICE

By notice of petition and verified petition dated November 14, 2011, petitioner moves for
 a judgment staying arbitration between it and respondents and adding the proposed additional

respondents to the proceeding. Respondent Hernandez and proposed respondents Country-Wide Management Services as third-party administrator for Ocean Harbor Casualty Insurance Company (Ocean Harbor), State Farm Mutual Automobile Insurance Company s/h/a State Farm Mutual Insurance Company (State Farm), Endicott, Sentry Insurance Company (Sentry), Elrac Inc. (Elrac), Elco Administrative Service Company (Elco), and Enterprise Holdings, Inc. (Enterprise) (Elrac, collectively) oppose the petition.

By notice of motion dated January 24, 2012, petitioner moves for an order permitting it to amend its petition to add Elrac, LLC as an additional respondent in the proceeding. Elrac, LLC opposes the motion.

The proceeding and motion are consolidated for decision.

I. PETITION TO STAY ARBITRATION

A. Background

According to the pertinent police report, on December 21, 2009, at the intersection of East 135th Street and Lincoln Avenue in Manhattan, a vehicle driven by Louie Rodriguez and registered to Elrac, Inc. came to a stop behind a school bus with flashing lights. A vehicle driven by and registered to Christina Endicott then struck a vehicle driven by and registered to Anthony Acevedo, causing it to strike a vehicle driven by Malick Sow and registered to Mohamed Sillah, which then struck Rodriguez's vehicle. (Petition, dated Nov. 14, 2011 [Pet.], Exh. B).

Hernandez was a passenger in Acevedo's vehicle. (*Id.*). The police report of the accident reflects that Rodriguez's vehicle was self-insured and that the other three vehicles were insured. (*Id.*).

On or about February 3, 2010, Hernandez served petitioner with a notice of claim and demand for arbitration. (*Id.*, Exh. A).

B. Analysis

Petitioner asserts that the arbitration should be stayed to the extent that Hernandez alleges that the other vehicles involved in the accident were uninsured, and contends, upon information and belief, that Enterprise insured Rodriguez's vehicle on behalf of Elrac and Rodriguez may have been insured by Ocean Harbor, that Endicott's vehicle was insured by State Farm, and that Sillah's vehicle was insured by Sentry. (*Id.*).

Hernandez maintains that Sillah's vehicle was uninsured, as evidenced by a letter dated from Sentry dated October 20, 2011 in which it denies that the vehicle was listed on an insurance policy issued by it before or after the accident. (Affirmation of Robert J. Greenstein, Esq., dated Nov. 16, 2011, Exh. C). He observes that petitioner submitted no proof that the vehicle was insured. (*Id.*).

Sentry denies that it insured the vehicle which Sillah was driving, as it cancelled his insurance policy on August 9, 2009, four months before the accident, based on his failure to pay the insurance premiums. (Affirmation of Michael J. Pender, Esq., dated Jan. 19, 2012; Affidavit of Amy S. Brunner, dated Jan. 12, 2012; Exhs. A-D).

In reply, petitioner argues that Sentry's proof of cancellation of the policy is not in admissible form. (Reply Affirmation, dated Jan. 24, 2012).

As the validity of Sentry's notice of cancellation may not be determined on the papers, it is joined as a respondent and a framed issue hearing is directed. (*See Matter of Victoria Select Ins. Co. v Munar*, 80 AD3d 707 [2d Dept 2011] [in petition to stay arbitration of uninsured motorist benefits where parties submitted documents raising issues of fact as to cancellation of policy, joinder of proposed additional respondents as necessary parties for framed issue hearing

proper]; *Matter of N.Y. Cent. Mut. Ins. v Davalos*, 39 AD3d 654 [2d Dept 2007] [same]; *Matter of N.Y. Cent. Mut. Fire Ins. Co. v Hall*, 7 AD3d 629 [2d Dept 2004] [same]).

II. ADDITION OF PROPOSED RESPONDENTS

As petitioner ~~did not~~ submit ^{any} reply to the opposition of proposed respondents Ocean Harbor, State Farm, and Elrac related to their joinder in this proceeding, and as they ^{have} established that they are not proper parties here, the motion to add them as respondents is denied.

III. MOTION TO AMEND

As I have determined that Elrac is not a proper party here, there is no ground upon which to add Elrac, LLC, the entity now conducting business under Elrac's name, as a respondent.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED, that Nationwide Insurance Company's motion to join proposed additional respondents as parties to this action is granted only to the extent of joining Sentry Insurance as a respondent; and it is further

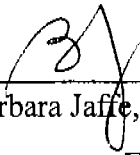
ORDERED, that the arbitration in this matter is temporarily stayed pending a framed issue hearing; it is further

ORDERED, that, within 60 days from the date of this order, Nationwide Insurance Company shall file with the Clerk of the Trial Support Office (Room 158) a copy of this order with notice of entry, a note of issue, and a statement of readiness, and shall pay the appropriate fees, if any; and it is further

ORDERED, that the parties must mutually contact the court to schedule the hearing; and it is further

ORDERED, that the motion to amend is denied.

ENTER:



Barbara Jaffe, JSC
BARBARA JAFFE
J.S.C.

DATED: May 11, 2012
New York, New York

MAY 11 2012

FILED

MAY 16 2012

**NEW YORK
COUNTY CLERK'S OFFICE**