

American Tr. Ins. Co. v Martinez
2017 NY Slip Op 32590(U)
December 12, 2017
Supreme Court, New York County
Docket Number: 155848/2016
Judge: Erika M. Edwards
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 47

AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

-against-

FREDDY MARTINEZ, CITIMEDICAL I, PLLC,
COMPLETE SPINAL PHYSICAL THERAPY AND
CHIROPRACTIC PLLC, FRANTZ JASMIN, MD,
JASPER BISCARO, RPT, DEMETRIOS KARAKIZIS
DC, OPTIMUM HEALTH ACUPUNCTURE, P.C.,
AND ROYAL REHAB INC.,

Defendants.

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DECISION AND ORDER

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered
Notice of Motion and Affidavits/ Exhibits	<u>1</u>

ERIKA M. EDWARDS, J.:

Plaintiff American Transit Insurance Company ("American Transit") now moves, by notice of motion, filed on October 10, 2017, for a default judgment in its favor, pursuant to CPLR §3215, against Freddy Martinez ("Martinez"), Citimedical I, PLLC, Complete Spinal Physical Therapy and Chiropractic PLLC, Frantz Jasmin, MD, Jasper Biscaro, RPT, Demetrios Karakizis DC, and Optimum Health Acupuncture, P.C. (collectively "Defaulting Defendants") for their failure to answer or appear in this action. American Transit also moves for summary judgment against answering Defendant Royal Rehab Inc.¹ For the reasons set forth herein, American Transit's motion for default judgment is GRANTED without opposition to the extent

¹ After filing the instant motion, American Transit discontinued the matter against Defendant Royal Rehab Inc.

that default judgment is entered in American Transit's favor as against Defaulting Defendants. American Transit's motion for summary judgment against Defendant Royal Rehab Inc. is DENIED as moot.

Plaintiff American Transit commenced this action on July 14, 2016, for a judgment declaring that it owes no duty to pay any No-Fault benefits arising out of an alleged motor vehicle accident which occurred on September 7, 2015. The individual defendant Martinez (hereafter "Claimant"), was a passenger in one of the vehicles involved in the accident that was insured by American Transit. The vehicle's insurance policy also included the mandatory no-fault endorsement. The complaint alleges that after American Transit received notice of the accident, it attempted to investigate and subsequently requested that the Claimant appear for an Examination Under Oath ("EUO"). Despite due demand, the Claimant failed to appear for his scheduled EUO on two occasions. Those failures to appear violated provisions in the No-Fault Regulations and violated conditions precedent to coverage for all No-Fault claims submitted by the Claimant and the medical provider defendants as his assignees.

Pursuant to CPLR 3215, American Transit has demonstrated that Defaulting Defendants were properly served with the summons and complaint, that Defaulting Defendants failed to answer or appear in this action, that the time to do so has long since passed, and that American Transit's claims are meritorious.

Accordingly, it is hereby

ORDERED that Plaintiff American Transit Insurance Company's motion for default judgment as against Defendants against Freddy Martinez, Citimedical I, PLLC, Complete Spinal Physical Therapy and Chiropractic PLLC, Frantz Jasmin, MD, Jasper Biscaro, RPT, Demetrios Karakizis DC, and Optimum Health Acupuncture, P.C. is granted; and it is further

ORDERED that the Clerk is directed to enter default judgment in favor of Plaintiff American Transit Insurance Company as against Defendants Freddy Martinez, Citimedical I, PLLC, Complete Spinal Physical Therapy and Chiropractic PLLC, Frantz Jasmin, MD, Jasper Biscaro, RPT, Demetrios Karakizis DC, and Optimum Health Acupuncture, P.C.; and it is further;

ORDERED that Plaintiff American Transit Insurance Company's motion for summary judgment as against Defendant Royal Rehab Inc. is denied as moot since Plaintiff discontinued the matter against Defendant Royal Rehab, Inc. after filing the instant motion; and it is further

ADJUDGED and DECLARED that Freddy Martinez is not an eligible injured person entitled to no-fault benefits under American Transit insurance policy CAP 613445, Claim No.: 784158-03; and it is further

ADJUDGED and DECLARED that American Transit is not obligated to honor or pay claims for reimbursement submitted by the providers named herein, as assignees of Freddy Martinez, under American Transit insurance policy CAP 613445, Claim No.: 784158-03, nor is American Transit required to provide, pay, honor or reimburse any claims set forth herein, in any current or future proceeding, including, without limitation, arbitrations and/or lawsuits seeking to recover no-fault benefits arising under American Transit insurance policy CAP 613445, Claim No.: 784158-03 from the alleged accident of September 7, 2015 involving Freddy Martinez as Freddy Martinez is not an eligible injured person as defined by the Policy and/or New York State Regulation 68; and it is further

ADJUDGED and DECLARED that Plaintiff American Transit Insurance Company is not required to provide, pay, or honor any current or future claim for no-fault benefits under the Mandatory Personal Injury Protection endorsement under American Transit insurance policy

CAP 613445, Claim No.: 784158-03, nor is American Transit Insurance Company required to provide, pay, honor or reimburse any claims set forth herein, in any current or future proceeding, including, without limitation, arbitrations and/or lawsuits seeking to recover no-fault benefits arising under American Transit Insurance Company insurance policy CAP 613445, Claim No.: 784158-03 from the alleged accident of September 7, 2015 involving Freddy Martinez as Freddy Martinez is not an eligible injured person as defined by the Policy and/or New York State Regulation 68; and it is further

ORDERED that as per previously submitted Stipulations by the parties, the complaint is dismissed in its entirety, with prejudice and without cost, as against Defendant Royal Rehab, Inc. only and the Clerk is directed to enter judgment accordingly in favor of said defendant.

This constitutes the decision and order of the court.

Date: December 12, 2017



HON. ERIKA M. EDWARDS, J.S.C.