DISTRICT COURT OF NASSAU COUNTY
FIRST DISTRICT: CIVIL PART 2

NAQIY MEDICAL, P.C.
a/a/o MICHAEL PEREZ

Plaintiff(s),

- against -

UNITRIN DIRECT INSURANCE COMPANY

Defendant(s).

Present:
Hon. Michael A. Ciaffa

Index No. CV-050030-10

The following papers have been considered by the Court on this motion: submitted April 27, 2012

Papers Numbered

Notice of Motion, Affirmation & Exhibits Annexed..... 1 - 2
Affirmation in Opposition..... 3
Reply Affirmation..... 4

Defendant, Unitrin Direct Auto Insurance Company ("Unitrin"), moves to dismiss plaintiff's no-fault action on grounds of res judicata and collateral estoppel. Plaintiff, Naqiy Medical Services, P.C. ("Naqiy"), opposes the motion.

According to plaintiff's complaint, dated November 24, 2010, it rendered health service benefits to its assignor, Michael Perez, after Mr. Perez was injured in a motor vehicle accident on or about June 10, 2010. After defendant denied payment of the claim, plaintiff commenced the instant action for no-fault benefits . The complaint identified defendant's policy number as 1168875, and its claim number as 2010025410.

By order dated December 16, 2011, the Supreme Court, New York County (Hon. Manuel J. Mendez, JSC), granted a declaratory judgment by default in favor of Unitrin against Naqiy and other medical providers. The order specifically states that Naqiy and the other named defendants "have no rights under 11 NYCRR 65-1.1 and plaintiff [Unitrin] has no duty to pay them No-Fault Claims with respect to the June 10, 2010 collision referenced as claim number 2010025410 under the policy of insurance number

1168875..." (Unitrin Direct Ins. Co. v. Fell A Plus Acupuncture, P.C., et al, index no. 104384/11, Supreme Court, New York County, decision and order dated December 16, 2011). The claim and policy numbers referenced in the Supreme Court's order are identical to those cited in the instant complaint.

Based upon the Supreme Court's order in the declaratory judgment action, the instant action "is barred under the doctrine of res judicata." See Ava Acupuncture, P.C. v. NY Central Mut. Fire Ins. Co., 2012 NY Slip Op 50233 (App Term, 2d Dept). "To hold otherwise could result in a judgment in the instant action which would destroy or impair rights established by the order rendered in the declaratory judgment action." Id, citing Schykill Fuel Corp. v. Nieberg Realty Corp., 250 NY 304, 306-7 (1929).

Contrary to plaintiff's contention, the doctrine of res judicata applies equally to an order entered on default. See Ava Acupuncture, P.C. v. NY Central Mut. Fire Ins. Co., supra, and cases cited. As the Appellate Term recently held in Ava Acupuncture, supra, such an order is "a conclusive final determination." Id. Accordingly, defendant's motion is GRANTED and the action is DISMISSED.

So Ordered:

Michael A Ciaffa
District Court Judge

Dated: May 1, 2012

cc: Abrams, Fensterman, Fensterman, Eisman,
Greenberg, Formato & Einiger, LLP
Rubin, Fiorella & Friedman, LLP