

MEMORANDUM

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

.....
In the Matter of the application of AIU
INSURANCE COMPANY,

Petitioner,

- against -

For an Order Staying Arbitration by
SAMAROO SEEBARRAN,

Respondent.

- and -

HON. JOHN M. GALASSO
J.S.C.

Hearing Part 40

Index No. 12126/07

Calendar No. 2008N0539

Decision Reserved: 11/10/08

Decision Rendered: 11/17/08

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY and RANDALL J. CHANGAR,
Proposed Additional Respondent

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By: No Appearance

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By: Thomas V. Incantalupo, Esq.

The instant action arose from a three-car accident which occurred on October 7, 2005 and it was reported that the driver of one of the vehicles left the scene of the accident. Subsequently, respondent State Farm Mutual Automobile Insurance Company denied coverage for its insured, Randal J. Changar. Consequently, respondent Samaroo Seebarran sought recovery from his own

uninsured motorist coverage with petitioner AIU Insurance Company.

Upon application for a permanent stay of arbitration pursuant to CPLR §7503, the matter was set down on JULY 23, 2008 for a framed issue hearing on the issue of whether additional respondent Randall Changar's coverage was properly denied due to his failure to cooperate with State Farm.

In lieu of closing arguments, the parties submitted proposed Findings of Fact and Conclusions of Law on November 10, 2008 and decision was reserved.

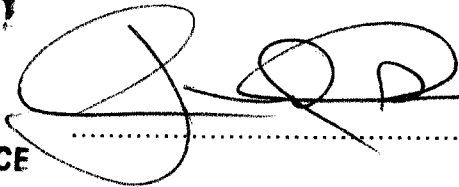
Based on the credibility of the witnesses and the exhibits submitted at the hearing, the Court adopts additional respondent State Farm's proposed Finding of Fact and Conclusions of Law that it properly disclaimed the defense and indemnification of its insured for his failure to cooperate in the investigation of the subject accident, as set forth in the three-pronged test in *Thrasher v. United States Liability Insurance Co.*, 19 NY2d 159, and its progeny.

In this case it is clear that additional respondent Changar claimed his home address at three different locations, apparently to suit his own purpose. He lied on official documents, such as his report of a missing vehicle to the New York City Police Department and his renewed license, listing the Liberty Avenue South, Richmond Hill address as his actual residence.

The undersigned has reviewed the Post Office certified mail receipts (Exhibits "G", "O", "Q", "S" and "U") and observed that between February 28 and April 26, 2006 the same individual signed the certified mail receipts at a Brentwood address, which respondent claimed as his residence on his insurance application. That same signature appears on two of the six receipts at the Liberty Avenue address, which respondent Changar now admits is his actual business address where he receives mail. Someone else signed the other four.

Accordingly, since State Farm properly disclaimed coverage for Randall Changar, petitioner's application to stay the arbitration of *Samaroo Sebarra* is denied.

ENTERED
NOV 21 2008
NASSAU COUNTY
COUNTY CLERK'S OFFICE


.....J.S.C.