

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. STEVEN M. JAEGER,
Acting Supreme Court Justice

In the Matter of the Petition of
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

TRIAL/IAS, PART 48
NASSAU COUNTY

INDEX NO.: 14586/05

Petitioner,

-against-

For an Order staying the arbitration attempted to
be had by

MAUREEN NOEL,

Respondent,

-and-

JOHN TEBAR, ANGEL L. TEBAR AND
GOVERNMENT EMPLOYEES INSURANCE
COMPANY,

Additional Respondents.

DECISION AND ORDER AFTER HEARING

Petitioner, STATE FARM moved to stay arbitration of an uninsured motorist claim (hit-and-run) made by a passenger, Respondent NOEL, in a vehicle insured by Petitioner. A hearing was ordered on the issue of whether there was physical contact with a "hit and run vehicle" and the additional Respondents GEICO and TEBAR were added as parties.

The hearing was held on April 12 and 26, 2006 before the undersigned. Testimony was taken from Angel Tebar, the driver of the alleged "hit" vehicle, Police Officer Erica Trafford, and Betty Ann Thomas, a non-party witness to the accident.

The Court makes the following findings of fact and conclusions of law.

On January 2, 2005, at approximately 9 p.m. to 10 p.m., Angel Tebar was operating a white Nissan Sentra eastbound on the Grand Central Parkway in Queens County near Francis Lewis Boulevard. As he moved from the left to middle lanes, he claimed he was "sideswiped" by a silver PT Cruiser in the left lane, causing him to lose control of the Sentra and veer to the right. Tebar did not recall much that happened after that, as he lost consciousness, except that his vehicle left the road on the right side of the parkway and hit a tree. He testified that the PT Cruiser kept going and that he did not recall striking any other vehicle.

Officer Trafford did not witness the accident. She testified as to her completion of the accident report, which was not admitted into evidence.

Betty Ann Thomas testified that she was operating a vehicle on the parkway and witnessed the accident from the right lane. She testified that the Nissan Sentra operated by Tebar was in the left lane and a white Mitsubishi SUV was in the middle lane, both a few car lengths ahead of her.

Ms. Thomas testified that the Nissan Sentra swerved to the right, locked fenders with the Mitsubishi, and both spun off the road. She did not see any other vehicles involved in the accident, although there was a vehicle exiting the gas station in the center of the highway at the same time. She did not see that vehicle make contact with Tebar's Nissan. However, she stated that Tebar told her this vehicle (which he

described to her as "red") cut him off and he swerved to avoid it. She did not see either a red or silver car. She also stated Tebar did not talk about a silver PT Cruiser and she did not see one.

Upon considering the testimony presented, the Court finds that the claimant has failed to prove there was "physical contact" with a "hit and run" vehicle. Utica Mutual Ins. Co. v. LeConte, 3 AD3d 534 (2d Dept. 2004); Countrywide Insurance Co. v. Colon, 279 AD2d 427 (1st Dept. 2001). Accordingly, the Court grants an order pursuant to CPLR 7503(c) staying the arbitration attempted to be had by Respondent NOEL pursuant to her Demand for Arbitration dated August 24, 2005.

The foregoing shall constitute the decision and order of the Court.

Dated: May 31, 2006


STEVEN M. JAEGER, A.J.S.C.

ENTERED

JUN 01 2006

NASSAU COUNTY
COUNTY CLERK'S OFFICE