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SHORT FORM ORDER

**SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU - PART 17**

**Present: HON. WILLIAM R. LaMARCA
Justice**

**In the Matter of the Application for a Stay
of Arbitration Between
ADIRONDACK INSURANCE EXCHANGE,**

**Motion Sequence #1
Submitted April 10, 2008**

Petitioner,

-against-

INDEX NO: 4782/08

ARISTEDES ALFARO,

Respondent.

The following papers were read on this motion:

Notice of Petition and Petition	1
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Petitioner, ADIRONDACK INSURANCE EXCHANGE (hereinafter referred to as "ADIRONDACK"), moves for an order, pursuant to CPLR Article 75, permanently staying arbitration of an alleged uninsured vehicle claim, or, in the alternative, temporarily staying the arbitration pending a hearing to determine whether the respondent, ARISTEDES ALFARO, was involved in a "hit and run" accident, whether he unreasonably failed to ascertain the identity of the owner/operator of the offending vehicle at the scene, and/or whether he should be precluded from seeking uninsured motorist benefits on the basis that his failure to ascertain the identity of the offending vehicle prejudiced ADIRONDACK's right

of recovery. Counsel for respondent, ARISTEDES ALFARO, opposes the petition, and asserts that respondent has fully complied with the terms and conditions precedent to obtaining uninsured benefits and the petition should be denied. The petition is determined as follows:

ALFARO has demanded arbitration based upon an uninsured motorist claim on his behalf by reason of being a passenger in a Toyota Corolla owned and operated by Maria Sanchez, ADIRONDACK's insured, that allegedly came in contact with another vehicle on June 19, 2007. Prior to receiving the request for Arbitration, ADIRONDACK was put on notice of a potential uninsured motorist claim on behalf of ALFARO, and, on July 11, 2007, ADIRONDACK issued a reservation of rights letter while they investigated the claim. As part of the investigation, an Examination Under Oath (EUO) of both ALFARO and the driver, Ms. Sanchez, was requested.

At her EUO, Ms. Sanchez stated through an interpreter that she was stopped when she felt and impact to the rear of her car. She stated that she got out of the car and tried to speak to the woman in the car behind her but, because she doesn't understand English, she didn't understand what the woman said. She stated that she saw that the rear of her car was basically undamaged so she said to herself, nothing happened, and that the other driver left and she returned to her car. She testified that she was nervous and that neither her passenger or the other woman ever got out of the car. She stated that she did not take down the license plate of the other car. She claimed that, when she got home, she saw that her car was damaged on the right side by the rear door, that the right rear door had difficulty opening and that there were "gaps" near the rear lights. After inspecting the car, she called the Police Department who instructed her to return to the scene of the accident

where the Police arrived and filled out an Accident Report.

At his EUO, Mr. ALFARO stated that he was in the front passenger seat of Ms. Sanchez' automobile when it was hit in the right rear. He testified that the female driver of the other car and Ms. Sanchez got out of their cars but he did not know if they spoke . He testified that Ms. Sanchez was out of the car for about 30 seconds, then returned to the car and said "It's nothing". He stated that, when Ms. Sanchez got home, she saw that the bumper had moved, the rear door had moved and it was open on one side and had closed up on the other. He testified that, thereafter, she called the police and she and Mr. ALFARO returned to the accident scene and a police officer arrived and wrote an accident report.

The Police Report reflects that the other vehicle "LSA"- left the scene of the accident. On September 6, 2007, ADIRONDACK disclaimed coverage for uninsured motorist benefits on the basis that the operator/owner of the alleged "hit and run" vehicle was ascertainable after the accident. The disclaimer was also based upon ALFARO's prejudicial failure to do what was necessary to be able to transfer the right of recovery to ADIRONDACK. The damage estimate to the Sanchez vehicle was \$3,412.61. It is ADIRONDACK'S position that the demanded Arbitration should be permanently stayed on the basis that the identity of the owner/operator of the alleged "hit and run" vehicle could have been ascertained, and because ALFARO's failure to ascertain the identity of the other vehicle amounts to a prejudicial failure to do what was needed to transfer the right of recovery to ADIRONDACK.

In opposition to the motion, counsel for ALFARO, who was retained to represent him regarding personal injuries he allegedly sustained in the subject accident, states that

ALFARO was a passenger in Ms. Sanchez' car which was struck by a motor vehicle that "fled the scene of the accident without providing identifying information". He claims that both ALFARO and Sanchez submitted to an EUO and have complied with the terms and condition precedent to obtaining supplementary uninsured motorist benefits. He states that the accident was reported to the Police, and that notice was given to ADIRONDACK (incorrectly identified as "respondent") within 30 days of the accident. Counsel for respondent states that no identifying information was obtained on the driver of the other vehicle and thus, the offending vehicle clearly fits within the definition of an uninsured motor vehicle as written in the policy. He urges that the Court deny ADIRONDACK's request for a stay or, at the very least, set the matter down for a hearing.

After a careful reading of the submissions herein, it is the judgment of the Court that a hearing is required on the issue of whether there is a right to proceed to arbitration and whether the respondent, ARISTEDES ALFARO, was involved in a "hit and run" accident, whether he unreasonably failed to ascertain the identity of the owner/operator of the offending vehicle at the scene, and/or whether he should be precluded from seeking uninsured motorist benefits on the basis that his failure to ascertain the identity of the offending vehicle prejudiced ADIRONDACK's right of recovery. Accordingly, it is hereby

ORDERED, that ADIRONDACK'S petition for a temporary stay of the demanded arbitration is granted pending resolution of the issues raised herein; and it is further


ORDERED, that subject to the discretion of the Justice there presiding, this matter shall appear on the calendar of Calendar Control Part on September 23, 2008 at 9:30 A.M., for assignment to a framed issue hearing.

ORDERED, that petitioner shall serve and file a Note of Issue no later than sixty (60) days after entry of this order. A copy of this order shall accompany the Note of Issue when filed, together with proof that a copy of the order has been mailed to all parties to the original petition within fifteen (15) days after entry. A copy of this order shall be served on the Clerk of the Calendar Control Part within twenty (20) days after entry.

All further requested relief not specifically granted is denied.

This constitutes the decision and order of the Court.

Dated: July 2, 2008



WILLIAM R. LaMARCA, J.S.C.

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ENTERED

JUL 22 2008

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**