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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DANIEL MARTIN
Acting Supreme Court Justice

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

Petitioner.

- against -

For an Order staying the arbitration attempted to be
had by
KENNETH WILLIAMS.

Respondent.

- and -

BARUCH MOSKOWITZ AND UNITRIN
PREFERRED INSURANCE COMPANY.

Proposed Additional Respondents.

TRIAL/IAS, PART 31
NASSAU COUNTY

Sequence No.: 001
Index No.: 002919/07

The following named papers have been read on this motion:

	Papers Numbered
Notice of Petition and Affidavits Annexed	X
Order to Show Cause and Affidavits Annexed	
Answering Affidavits	X
Replying Affidavits	X

Petitioner's application for an order permanently staying the uninsured motorist arbitration herein is granted to the extent that the matter is temporarily stayed as set forth below.

The following facts are undisputed:

- 1) Prior to December 4, 2005 petitioner had issued a liability policy of automobile insurance to non-party Hunte Williams and said policy was in effect on that date;
- 2) Said policy contained an uninsured motorist arbitration provision;
- 3) On December 4, 2005 respondent Kenneth Williams was injured as a result of a car accident while a passenger in the vehicle owned by Hunte Williams and insured by petitioner;

4) The Williams vehicle was involved in a collision with that owned and operated by proposed-additional respondent Baruch Moskowitz;

5) At least prior to October 21, 2005 the Moskowitz vehicle was insured by proposed-additional respondent Unitrin Preferred Insurance Company; and

6) On February 8, 2007 petitioner received a demand for uninsured motorist arbitration based upon personal injuries suffered by Kenneth Williams in the December 4, 2005 accident pursuant to the policy of insurance issued to Hunte Williams.

Petitioner first assert that it is entitled to a permanent stay on the grounds that the Moskowitz vehicle was insured on the date of the accident. Specifically, asserts petitioner, any claim by Unitrin that it cancelled the policy by notice dated October 21, 2005 should be rejected because it failed to comply with the statutory and regulatory requirements for canceling the policy and that as a result it was still in effect on the date of the accident. The only specific alleged failure on Preferred's part to comply with the statutory requirements to properly cancel the policy pointed out by petitioner is that the type face for a certain portion of the cancellation is not in the required twelve point type.

Further, petitioner claims that the arbitration should at least be temporarily stayed pending completion of outstanding discovery in the arbitration.

In opposition respondent Williams asserts that all of the relevant language in the cancellation notice was in twelve point type. Further, Mr. Williams' attorney asserts in his affirmation that he has complied with all outstanding discovery demands and respondent remains ready and willing to appear for physical examinations and examinations under oath.

Proposed additional respondent Unitrin likewise asserts that it has complied with all requirements for cancellation of the policy in terms of the type size as well as the time requirements for mailing the cancellation to its insured. Unitrin claims that such is proven in its copy of the notice and the accompanying certificates of mailing which counsel affirms are annexed collectively to its opposition papers as an exhibit. No such exhibit has been attached to the opposition papers.

Strict adherence with the statutory procedures set forth in Vehicle and Traffic Law §313 and 15 NYCRR 34, et seq. is necessary to effectuate cancellation of an insurance policy. See, Nassau Insurance Company v. Hernandez, 65 A.D.2d 551 (2nd Dep't 1978). Failure to comply with said requirements makes any such attempted cancellation invalid and ineffective. See, Dunn v. Passmore, 228 A.D.2d 472 (2nd Dep't 1996).

As the parties are in conflict as to whether the policy was properly cancelled (especially as no party has demonstrated whether Unitrin complied with the time requirements for cancelling the Moskowitz policy) a hearing is necessary on this issue.

The matter is hereby set down for a hearing to be held before the Calendar Control Part (CCP) at 9:30 a.m. on the 19th day of November, 2007.

All carriers claimed to have provided offending vehicle coverage and their insureds are hereby added as necessary parties (see CPLR 1001) provided petitioner obtains jurisdiction over such parties pursuant to CPLR Art.3 by service of a copy of this order and all papers upon which it is based within 20 days after entry. A failure to add such parties may result in a dismissal for the failure to add a necessary party (see, CPLR §1003).

There shall be a response to the petition by added respondents. Such response shall be served no later than 20 days after jurisdiction has been obtained. The response by purported insurers shall include copies of all documentation and affidavits relief upon in support of the claims of non-coverage.

Petitioner shall serve a Note of Issue no later than 90 days after entry of this order in default of which the action shall be deemed abandoned (see, CPLR§3126). The Note of Issue shall be accompanied by a copy of this order and proof that jurisdiction has been obtained over all necessary parties and a statement that a copy of such order has been mailed to all parties to the original petition within 15 days after entry.

So Ordered.

Dated: June 18, 2007


A.J.S.C.

ENTERED
JUN 21 2007
NASSAU COUNTY
COUNTY CLERK'S OFFICE