

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS P. PHELAN,
Justice.

TRIAL/IAS PART 2
NASSAU COUNTY

MERCURY CASUALTY COMPANY,

Plaintiff,

ORIGINAL RETURN DATE: 11/09/11
SUBMISSION DATE: 11/09/11
Index No. 9265/11

-against-

MOTION SEQUENCE #002

INGER GRANT
LYNBROOK ADV ACUPUNCTURE, P.C.
HEALTHY LIFE CHIROPRACTIC, P.C.
IDK IMAGING, P.C.
PROHEALTH ACUPUNCTURE, P.C.
SHERYL TOMACK, PHYSICIAN, LLC
BTS MEDICAL, P.C.
ELEMAM PHYSICIAN, P.C.
GREENWAY MEDICAL SUPPLY, INC,
BIG APPLE CHIROPRACTIC, P.C.

Defendants.

The following papers read on this motion:

Notice of Motion..... 1

Application by plaintiff pursuant to CPLR 3215 for a default judgment against defendants LYNBROOK ADV ACUPUNCTURE, P.C., HEALTHY LIFE CHIROPRACTIC, P.C., PROHEALTH ACUPUNCTURE, P.C., SHERYL R. TOMACK, PHYSICIAN, LLC, s/h/a SHERYL TOMACK, PHYSICIAN, LLC, BTS MEDICAL, P.C., ELEMAM PHYSICIAN, P.C., GREENWAY MEDICAL SUPPLY, INC and BIG APPLE CHIROPRACTIC, P.C. is granted. No opposition to the application has been submitted by defendants. The action against IDK IMAGING, P.C. has been discontinued.

In this action, plaintiff, a no-fault insurance carrier, seeks a declaratory judgment

motor vehicle accident that occurred on March 21, 2010, and that none of defendants or their assigns are entitled to first-party no-fault benefits. Treatment was purportedly sought from the medical provider defendants for injuries alleged to have been sustained as a result of the accident which occurred on March 21, 2010.

All of the defaulting defendants were served with the Summons and Verified Complaint. Counsel for plaintiff states that the defaulting defendants have failed to appear or otherwise move with respect to the complaint.

Plaintiff challenges its obligation to provide coverage alleging that the insured made material misstatements in her application. In support of plaintiffs' claim, it submits an affirmation of counsel and affidavits of Keith Miller and Keith Wilson, employees of plaintiff, as well as a copy of the verified complaint (Ex. A).

It is alleged that a certain policy of insurance was issued to Inger Grant ("Grant") providing no-fault coverage. Plaintiff alleges in its complaint that defendant Grant stated in her application that she resided at 143 South Maplewood Road, Monticello, New York 12701 but stated on the police report that she resided at 972 Sherman Avenue, Bronx, New York 10456.

It is alleged in the complaint that during an investigation, defendant Grant admitted that the vehicle was registered to the Bronx address where she resided. Mr. Miller avers that the policy would not have been underwritten at the rate charged had plaintiff known of the actual residence address. On April 30, 2011, plaintiff denied the claims based upon the material misrepresentations.

Based upon all of the foregoing, plaintiff's motion for a default judgment is granted.

Submit declaratory judgment.

This decision constitutes the order of the court.

Dated: January 5, 2012

HON THOMAS P. PHELAN

THOMAS P. PHELAN, J.S.C.

ENTERED

JAN 09 2012

NASSAU COUNTY
COUNTY CLERK'S OFFICE

Attorneys/Parties of Record:

The Law Office of Jason Tenenbaum, P.C.
Attention: Jason Tenenbaum, Esq.
Attorneys for Plaintiff
595 Stewart Avenue, Suite 550
Garden City, NY 11530

Inger Grant
Defendant
143 South Maplewood Road
Monticello, NY 12701

Lynbrook Adv Acupuncture, P.C.
Defendant
143 Hughes Place
Albertson, NY 11507

Healthy Life Chiropractic, P.C.
2801 East 11th Street, Apartment 3B
B
Brooklyn, NY 11235

IDK Imaging, P.C.
Defendant
1963 Grand Concourse
Bronx, NY 10453

Economou & Economou, P.C.
Attention: Theodore Economou, Esq.
Attorneys for IDF Medical Diagnostics, P.C.
a/a/o Inger Grant
485 Underhill Boulevard
Syosset, NY 11791

Prohealth Acupuncture, P.C.
Defendant
7205 - 20th Avenue
Brooklyn, NY 11204

Sheryl R. Tomack, Physician, LLC
Defendant
30 Merrick Avenue, Suite 110
East Meadow, NY 11554

BTS Medical, P.C.

Defendant

160 Long Beach Road

Island Park, NY 11558

Elemam Physician, P.C.

Defendant

1A Whispering Court

Dix Hills, NY 11746

Greenway Medical Supply, Inc.

Defendant

2570 - 86th Street

Brooklyn, NY 11214

Big Apple Chiropractic, P.C.

Defendant

4181 Bedford Avenue

Brooklyn, NY 11229