

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

MDAX Inc.  
(Applicant)

- and -

Old Republic Insurance Co.  
(Respondent)

AAA Case No. 17-17-1056-4896

Applicant's File No. N/A

Insurer's Claim File No. 15121034953-0001

NAIC No. 24147

**ARBITRATION AWARD**

I, Phyllis Saxe, the undersigned arbitrator, designated by the American Arbitration Association pursuant to the Rules for New York State No-Fault Arbitration, adopted pursuant to regulations promulgated by the Superintendent of Insurance, having been duly sworn, and having heard the proofs and allegations of the parties make the following **AWARD**:

Injured Person(s) hereinafter referred to as: Assignor (YM)

1. Hearing(s) held on 06/06/2018, 06/28/2018  
Declared closed by the arbitrator on 06/28/2018

Walter Pisary, Inc. from The Law Offices of Hillary Blumenthal P.C. participated in person for the Applicant

Jonathan Oxenberg, Esq. from Lewis Brisbois Bisgaard & Smith LLP participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **\$ 1,346.76**, was NOT AMENDED at the oral hearing.  
Stipulations WERE NOT made by the parties regarding the issues to be determined.
3. Summary of Issues in Dispute

The dispute before me arises from an automobile accident that occurred on 12/09/15. The bills in this dispute seek payment of supplies that MDAX, Inc. provided Assignor on 2/8/16 and 2/26/16. The bills were mailed on 2/29/16 and 3/14/16, respectively. However, the insurer did not issue denials.

The issue is whether Respondent's failure to issue denial of payment supports granting applicant no-fault compensation .

#### 4. Findings, Conclusions, and Basis Therefor

This award is based on my thorough review of the documentary evidence submitted by the parties to the American Arbitration Association and maintained in the MODRIA, electronic case filing system and oral arguments presented by both parties' representatives during the hearing.

Pursuant to 11 NYCRR 65-4.5 (o) (1) (regulation 68D), the arbitrator shall be the judge of the relevance and materiality of the evidence offered and strict conformity to legal rules of evidence shall not be necessary. The Arbitrator may question any witness or party and independently raise any issue that the arbitrator deems relevant to making an award that is consistent with the Insurance Law and Department Regulations.

The insurer submits an affidavit from Kimberly Burm, its no -fault claims examiner. Ms.Burm, stated that the bills for payment of the supplies were never served on the insurer at it's Lexington, KY address. The bills were, in fact, served on the wrong address. They were mailed to PO Box, 94696 Cleveland, Ohio. The correct address for submitting claims was the address that the applicant used when it served its AR-1- PO. Box 14155 Lexington KY. 40512.

Applicant has failed to establish its prima facie case with proof that it submitted a proper claim, setting forth the fact and the amount charged for the services rendered and that payment of no-fault benefits was overdue (see Insurance Law § 5106 a; Mary Immaculate Hosp. v. Allstate Ins. Co., 5 AD 3d 742, 774 N.Y.S. 2d 564 [2004]; Amaze Med. Supply v. Eagle Ins. Co., 2 Misc. 3d 128A, 784 N.Y.S. 2d 918, 2003 NY Slip Op 51701U [App Term, 2d & 11th Jud Dists]).

Payment cannot be overdue if the claims were not mailed to the proper address. The Applicant does not offer any evidence to counter its failure to use the proper address. Its proof of mailing indicates that it served the bills at the Cleveland Ohio address.

Accordingly the claim is denied.

#### 5. Optional imposition of administrative costs on Applicant.

Applicable for arbitration requests filed on and after March 1, 2002.

I do NOT impose the administrative costs of arbitration to the applicant, in the amount established for the current calendar year by the Designated Organization.

#### 6. I find as follows with regard to the policy issues before me:

- ☐ The policy was not in force on the date of the accident
- ☐ The applicant was excluded under policy conditions or exclusions

- ☐ The applicant violated policy conditions, resulting in exclusion from coverage
- ☐ The applicant was not an "eligible injured person"
- ☐ The conditions for MVAIC eligibility were not met
- ☐ The injured person was not a "qualified person" (under the MVAIC)
- ☐ The applicant's injuries didn't arise out of the "use or operation" of a motor vehicle
- ☐ The respondent is not subject to the jurisdiction of the New York No-Fault arbitration forum

Accordingly, the claim is DENIED in its entirety

This award is in full settlement of all no-fault benefit claims submitted to this arbitrator.

State of New York

SS :

County of Nassau

I, Phyllis Saxe, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

07/29/2018  
(Dated)

Phyllis Saxe

### **IMPORTANT NOTICE**

*This award is payable within 30 calendar days of the date of transmittal of award to parties.*

*This award is final and binding unless modified or vacated by a master arbitrator. Insurance Department Regulation No. 68 (11 NYCRR 65-4.10) contains time limits and grounds upon which this award may be appealed to a master arbitrator. An appeal to a master arbitrator must be made within 21 days after the mailing of this award. All insurers have copies of the regulation. Applicants may obtain a copy from the Insurance Department.*

## **ELECTRONIC SIGNATURE**

**Document Name:** Final Award Form  
**Unique Modria Document ID:**  
2aeedd286c7e5afc0fe088448eb292b6

### **Electronically Signed**

Your name: Phyllis Saxe  
Signed on: 07/29/2018