American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Union DME (Applicant)	AAA Case No.	17-19-1145-7456
	Applicant's File No.	GM19-80455
- and -	Insurer's Claim File No.	592171
	NAIC No.	Self-Insured
MVAIC (Respondent)		

ARBITRATION AWARD

I, Keith Tola, 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: EIP and/or JAB

1. Hearing(s) held on 04/06/2021
   Declared closed by the arbitrator on 04/06/2021

   Joseph Paddrucco, Esq. from Law Offices of Gabriel & Moroff, P.C. participated in person for the Applicant

   Craig Marshall, Esq. from Marshall & Marshall, Esqs. participated in person for the Respondent

2. The amount claimed in the Arbitration Request, **$ 1,349.86**, 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

   This case stems from a New York motor vehicle accident which occurred on August 4, 2018, wherein the EIP, (hereinafter "JAB"), allegedly sustained injuries. Applicant seeks compensation for the provision of Durable Medical Equipment provided on December 10, 2018. MVAIC denied the claim based, in part, on the EIP's EUO testimony. MVAIC claims the EIP is considered to be a de facto owner of the vehicle he was operating at the time of the accident, and as such, under Article 52 of the Insurance Law, there is no coverage with MVAIC.

4. Findings, Conclusions, and Basis Therefor

This Award was issued upon consideration of the parties' arguments and upon review of the relevant evidence contained within the ADR Center files.

Relevant Facts Based On EIP's Testimony, Police Report, Notice of Intent, Etc.

The accident occurred on August 4, 2018, at which time the EIP, "JAB", was the unlicensed operator of the vehicle involved in the accident, a 2000 Nissan Maxima. The vehicle had Texas license plate(s). According to the EIP's Application to Make a Claim, he listed himself as the vehicle's owner. He noted the Vehicle was insured with ACCC Ins. Co. under a stated policy number, with effective dates 9/4/17 through 10/4/17. However, JAB indicated ACCC denied coverage.

The 2000 Nissan Maxima was registered to the EIP's brother, (hereinafter "MAB"), at a Texas residence. Again, it was insured with ACCC Ins. Co. by MAB, at a policy address in Texas. MAB executed various exclusions to the policy. He rejected PIP, UM/UIM and Medical Payments Coverage through ACCC. As such, the insurance company denied the claim made by JAB with respect to the underlying motor vehicle accident.

JAB testified the home he lives in, in Hempstead, New York, is owned by his brother, MAB. He resides at that residence with his brother, MAB, and his brother's wife and with his other brother, "JOAB". The EIP pays his brother, MAB, $600.00 per month rent.

The EIP never had a learner's permit or a driver's license.

The EIP, JAB, denied ownership of the vehicle he was operating at the time of the accident. He testified his brother, MAB, owned numerous vehicles, one of which was the vehicle he was driving.

The EIP testified his brother MAB bought the 2000 Nissan Maxima three years prior to the March 2019 EUO. It was purchased from a private individual in the State of Washington. The EIP was not present or even in Washington when his brother bought the vehicle. The EIP testified his brother, MAB, was in Washington on vacation when he purchased the vehicle. The EIP denied any monetary contribution on his part toward the purchase of the vehicle.

The title for the 2000 Nissan Maxima listed MAB as the owner. The vehicle was registered in Texas and the license plates were mailed to Hempstead, New York. MAB put the license plates onto the vehicle. The EIP denied contributing any money toward the registration fees for the 2000 Nissan Maxima. The EIP did not know which insurance company insured the vehicle and denied contributing money towards the insurance premium.

Despite denying any contributions toward the purchase, registration and insurance for the 2000 Nissan Maxima, the EIP admitted that he would give his brother, MAB, $150.00 per month for use of the vehicle. There were two sets of keys, one of which was

maintained by MAB and the other was in the possession of the EIP, JAB. JAB testified he drove the vehicle more often than his brother. He estimated he drove the vehicle about three times per week, and that his brother MAB drove the vehicle about two times per week. JAB did not have to ask his brother for permission prior to using the vehicle. Further, the EIP completed all oil changes and tire rotations on the vehicle. He would bring the vehicle in and pay for service at mechanic shops, as needed. He paid for gas, again as needed.

The EIP testified that although the vehicle he was operating was insured in Texas, his brother MAB had not lived in Texas since 2014.

Respondent's Defense

Based on all of the above, Respondent has taken the position that the EIP was the de facto owner of the 2000 Nissan Maxima and is not innocent to the lack of insurance at the time of the August 4, 2018 accident. As such, MVAIC denies having any legal obligation to pay no-fault benefits.

Determination

A person is not qualified for no-fault coverage through MVAIC if (1) he/she is an insured person, since that person would have available insurance upon which he/she could make a claim for first party no-fault benefits, or (2) is an owner of an uninsured motor vehicle, since Article 52 of the Insurance Law is not intended to provide relief to those who fail to obtain insurance. Indeed, Insurance Law Article 52 is not intended to provide relief to those who fail to obtain insurance. Englington Medical, P.C. v. MVAIC, 81 A.D.3d 223, 227-28 (2nd Dept. 2011).

Section 5202, Definitions: states: (j) "Financially irresponsible motorist" means the owner, operator, or other person legally responsible for the operation of an uninsured motor vehicle involved in an accident resulting in personal injury or death who did not have in effect at the time of such accident either: (1) a valid and collectible policy of bodily injury liability and property damage liability insurance or bond with applicable limits at least equal to those specified in section three hundred eleven of the vehicle and traffic law; (2) a certificate of self-insurance issued by the department of motor vehicles pursuant to section three hundred sixteen of the vehicle and traffic law; or (3) who has not otherwise complied with the provisions of section three hundred twelve of the vehicle and traffic law; or (4) who does not have in effect at the time of such accident a valid and collectible policy of bodily injury liability and property damage liability insurance with applicable limits at least equal to those specified in section 25.13 of the parks, recreation and historic preservation law.

In Dobson v. Gioia, 39 A.D.3d at 998-999, 834 N.Y.S.2d 356, the Court held: "While a certificate of title is considered to be prima facie evidence of ownership, this Court has previously held that it is not conclusive on that issue" (See Johnson v. Waugh, 244 A.D.2d 594, 595 [1997] Iv denied 91 N.Y.2d 810 [1998]; Salisbury v. Smith, 115 A.D.2d 840, 841 [1985]). "Instead, the certificate raises a presumption of ownership that may be rebutted by evidence that a non-title holder had a possessory interest in the

property "with its attendant characteristics of dominion and control." (Matter of Vergari v. Kraisky, 120 A.D.2d 739, 740 [1986].

As a "Financially irresponsible motorist," the EIP cannot be considered a "qualified person" as defined in the MVAIC statute, and may not take advantage of MVAIC coverage. Based on the EUO testimony, the EIP, an unlicensed operator, definitely was more, in the legal sense, than a mere "permissive user" of the vehicle. He drove the vehicle more than the registered owner, his brother MAB. He paid for oil changes, gas and other maintenance. He paid his brother MAB $150.00 per month for use of the vehicle. For all intents and purposes, the EIP was connected to this vehicle. He drove no other vehicle. The totality of the evidence points to the fact that the EIP, at the very least, had an obligation to know whether the car carried a valid insurance policy. I find his nexus to the vehicle in question makes him a de facto owner of the vehicle, and therefore he was bound by the legal obligations of ownership which included validating the presence of insurance coverage for the vehicle he maintained and operated more than the registered owner.

For all of the foregoing reasons, I find the EIP is not a "qualified person" within the meaning of the Statute. I find the denial of claim was proper and since the EIP is not entitled to no-fault benefits from MVAIC, applicant's claim must also be 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, Keith Tola, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my award.

04/19/2021
(Dated)

Keith Tola

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:
46d419f8b2fb4c27b1b955c71ad52918

Electronically Signed

Your name: Keith Tola
Signed on: 04/19/2021