

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Pranevicius Medical, PC
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-23-1309-0010

Applicant's File No. N/A

Insurer's Claim File No. 0705575447 2G7

NAIC No. 29688

ARBITRATION AWARD

I, Victoria Thomas, 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

1. Hearing(s) held on 12/29/2023
Declared closed by the arbitrator on 12/29/2023

Walter Pisary from Law Offices of Hillary Blumenthal LLC (Union City) participated virtually for the Applicant

David Kelly from Law Offices of James F. Sullivan, PC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,036.38**, 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

Whether Respondent submitted sufficient evidence to prove material misrepresentation in obtaining the insurance policy?

Assignor 'OM' was involved in a motor vehicle accident on 3/6/23. Applicant billed for ultrasounds conducted on 5/12/23. Respondent argues that the insured made material misrepresentations in procurement of the policy as the vehicle because of the failure to include a driver of the vehicle on the policy.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the file regarding this matter maintained by the AAA in the eCenter. This decision is based on my review of that file, as well as the arguments of the parties at the hearing.

After reviewing the record and evidence presented, I find that Applicant established a prima facie case of entitlement to reimbursement of its claim, by the submission of a completed NF-3 form documenting the facts and amounts of the losses sustained and by submitting evidentiary proof that the prescribed statutory billing forms [setting forth the fact and the amount of the loss sustained] had been mailed and received and that payment of no-fault benefits were overdue. See, *Mary Immaculate Hospital v. Allstate Insurance Company*, 5 A.D.3d 742, 774 N.Y.S.2d 564 (2nd Dept. 2004).

An insurer may preclude coverage based on material misrepresentation in the presentation of a claim. See, *A.B. Medical Services, PLLC v. Commercial Mutual Insurance Company*, 12 Misc.3d 8, 11-12; 820 NYS 2d. 378 (App. Term 2 Dept., 2006). A health care provider that obtains an assignment of the insured's no-fault benefits is not deemed an "innocent third party" and is subject to the same defenses as the assignor-insured, *Id.*

The Insurance Law and the common law of New York both establish that an insurance carrier may rescind and/or void any insurance policy if it can be shown that a material misrepresentation was made at the time of the procurement of the insurance policy. *Stracar Medical Services v. Nationwide Mut. Ins. Co.*, 39 Misc3d 1216(A), NYC Civ. Ct 2013, *BW Sportswear, Inc. v. Those Certain Underwriters at Lloyd's of London*, 32 Misc.3d 1245(A), 2011 435767, 2 (N.Y. Sup.Ct., N.Y. County, 2011) (Oing, J.) citing *Kiss Construction N.Y. Inc. v. Rutgers Casualty Ins. Co.*, 61 A.D.3d 412, 877 N.Y.S.2d 253 (1st Dept., 2009); NY Ins. Law § 3105.

Misrepresentation is deemed material when the insurance carrier demonstrates that it would not have issued the policy if the facts had been disclosed by the insured. *New Millennium Psych v Commerce Insurance Co.*, 2011 NY Slip Op 52286(U).

Respondent submitted the affidavit of Senior Field Support Representative, Paul Pepaola. Mr. Pepaola indicated the following:

1. Completed a search using the vehicle identification number.
2. The search revealed two vehicles, one of which was involved in the accident (Honda CR-V) and was insured with Respondent as of 2/28/23 to 8/29/23.
3. The Assignor was the only individual listed on the policy.
4. Had the policy listed the driver of the vehicle 'DZ' on the policy, there would have been a rate increase of \$327.49.

A 5/4/23 EUO of the Assignor, 'OM' revealed the following:

1. Current address is 809 Ocean Avenue, Brooklyn, NY. Has lived at the address for 14 years.
2. Lives at the address with several individuals including her partner 'DZ'
3. 'DZ' has lived with her for 14 years at the same residence.
4. 'OM' and 'DZ' have one bank account for bills including the purchase of the vehicle involved in the accident.
5. 'DZ' was listed as a driver when the vehicle was insured with Progressive Insurance Company.
6. She was having problems with 'DZ' which is why she didn't include him as a driver on the Allstate policy.
7. 'DZ' drives the vehicle about 5% of the time.
8. 'DZ' was driving the vehicle at the time of the accident. 'OM' and 'DZ' were headed to an individual so 'DZ' could fix his vehicle.

A 5/24/23 EUO of 'DZ' revealed the following:

1. Current address is 809 Ocean Avenue, Brooklyn, NY.
2. Lives with 'OM'
3. Shares a bank account with 'OM'
4. Day of the accident he was not driving. 'OM' was driving and making a delivery for Uber Eats.
5. Could not explain why he was not listed as a driver on the Allstate policy

Upon review of the documentation and the arguments of both sides, I find Respondent proved that material misrepresentations were made in obtaining the insurance policy. Applicant did not submit any documentation to counter the misrepresentation defense.

Therefore, Applicant's claims are 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 NY

SS :

County of Nassau

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

12/31/2023

(Dated)

Victoria Thomas

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:

5b2fc1da1f23d9422f07388c8f6f2643

Electronically Signed

Your name: Victoria Thomas
Signed on: 12/31/2023