

American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Rapid Equipment, Inc.
(Applicant)

- and -

Allstate Fire & Casualty Insurance Company
(Respondent)

AAA Case No. 17-23-1306-1271

Applicant's File No. NA

Insurer's Claim File No. 0679898260

NAIC No.

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 12/13/2023
Declared closed by the arbitrator on 12/13/2023

Sigalov Firm from The Sigalov Firm PLLC participated virtually for the Applicant

Steven Miranda from Law Offices of John Trop participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$1,581.75**, 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

Did Respondent prove it submitted a valid cancellation notice?

The Assignor, 'ER' was involved in a motor vehicle accident on 6/17/22. Applicant billed for DMEs with DOS 9/29/22 - 10/7/22. Respondent denied the claims because the policy was cancelled.

4. Findings, Conclusions, and Basis Therefor

I have reviewed the file with regard to 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).

Respondent argues that the subject insurance policy was canceled prior to the accident. The accident occurred on 6/17/22. Respondent contends that the policy was canceled effective 6/8/22 for nonpayment of policy premium. In support, Respondent submits a copy of the cancellation notice notifying the policyholder of the subject vehicle that the policy was to be canceled.

New York State Vehicle and Traffic Law Section 313 states as follows:

§ 313. Notice of termination. 1. (a) No contract of insurance for which a certificate of insurance has been filed with the commissioner shall be terminated by cancellation by the insurer until at least twenty days after mailing to the named insured at the address shown on the policy a notice of termination by regular mail, with a certificate of mailing, mailing, properly endorsed by the postal service to be obtained, except where the cancellation is for non-payment of premium in which case fifteen days' notice of cancellation by the insurer shall be sufficient...

(b) Every insurer shall retain a copy of the notice of termination mailed pursuant to this chapter and shall retain the certificate of mailing obtained from the postal service upon the mailing of the original of said notice. A copy of a notice of termination and the certificate of mailing, when kept in the regular course of the insurer's business, shall constitute conclusive proof of compliance with the mailing requirements of this chapter.

2. (a) Upon the termination of an owner's policy of liability insurance, other than an owner's policy of liability insurance for a motorcycle, at the request of the insured or by cancellation by the insurer, the insurer shall file a notice of termination with reference to such policy, as opposed to any insured vehicle or vehicles under such policy, with the commissioner not later than thirty days following the effective date of such cancellation or other termination, in accordance with the regulations required by paragraph (c) of this subdivision. An insurer shall not file a notice of termination with the commissioner except as required by this subdivision.

3. A cancellation or termination for which notice is required to be filed with the commissioner pursuant to subdivision two of this section shall not be effective with respect to persons other than the named insured and members of the insured's household until the insurer has filed a notice thereof with the commissioner or until another insurance policy covering the same risk has been procured, except that a notice filed with the commissioner, in the format prescribed by the commissioner, within the period prescribed in subdivision two of this section shall be effective as of the date certified therein, regardless of whether a suspension order is issued pursuant to section three hundred eighteen of this article.

Although the failure to file a notice of cancellation with the commissioner of motor vehicles as required by VTL §313 does not affect the cancellation as between the insured and the insurer, the failure to file the notice of cancellation renders the cancellation ineffective as against third parties thereby rendering the insurer liable for the claim. *Matter of Progressive Northern Ins. Co. v. White*, 23 A.D.3d 477 (App. Div., 2nd Dept., 2005); *Matter of Progressive Northeastern Ins. Co. v. Barnes*, 30 A.D.3d 523 (App. Div., 2nd Dept., 2006); *In the Matter of Government Employees Ins. Co. v. Phillip*, 98 A.D.3d 616 (App. Div., 2nd Dept., 2012).

Applicant asserted that Respondent failed to provide notice of cancellation provided to the commissioner. Upon review of the documentation, I agree that the notice of cancellation has not been submitted for review. As such, I find that Applicant's claims are overdue.

Therefore, Applicant's claims are granted.

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 applicant is AWARDED the following:

A.

Medical		From/To	Claim Amount	Status
	Rapid Equipment, Inc.	09/29/22 - 09/29/22	\$821.99	Awarded: \$821.99
	Rapid Equipment, Inc.	10/07/22 - 10/07/22	\$759.76	Awarded: \$759.76
Total			\$1,581.75	Awarded: \$1,581.75

B. The insurer shall also compute and pay the applicant interest set forth below. 06/03/2023 is the date that interest shall accrue from. This is a relevant date only to the extent set forth below.

Applicant is awarded interest pursuant to the no-fault regulations. See generally, 11 NYCRR §65-3.9. Interest shall be calculated "at a rate of two percent per month, calculated on a pro rata basis using a 30-day month." 11 NYCRR §65-3.9(a). A claim becomes overdue when it is not paid within 30 days after a proper demand is made for its payment. However, the regulations toll the accrual of interest when an applicant "does not request arbitration or institute a lawsuit within 30 days after the receipt of a denial of claim form or payment of benefits calculated pursuant to Insurance Department regulations." See, 11 NYCRR 65-3.9(c). The Superintendent and the New York Court of Appeals has interpreted this provision to apply regardless of whether the particular denial at issue was timely. LMK Psychological Servs., P.C. v. State Farm Mut. Auto. Ins. Co., 12 N.Y.3d 217 (2009).

C. Attorney's Fees

The insurer shall also pay the applicant for attorney's fees as set forth below

This case is subject to the provisions as to attorney fee promulgated in the Sixth Amendment to 11 NYCRR 65-4 (Insurance Regulation 68-D).

Applicant is awarded statutory attorney fees pursuant to the no-fault regulations. See, 11 NYCRR §65-4.6. The award of attorney fees shall be paid by the insurer. 11 NYCRR §65-4.5(d). Accordingly, "the attorney's fee shall be limited as follows: 20 percent of the total amount of first-party benefits and any additional first party benefits, plus interest thereon, for each applicant per arbitration or court proceeding, subject to a maximum fee of \$1,360." Id.

- D. The respondent shall also pay the applicant forty dollars (\$40) to reimburse the applicant for the fee paid to the Designated Organization, unless the fee was previously returned pursuant to an earlier award.

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:
3245b39831462112a784200d7bf10860

Electronically Signed

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