American Arbitration Association
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Staywell Chiropractic PC (Applicant)	AAA Case No.	17-23-1319-5120
	Applicant's File No.	BT23-246652
- and -	Insurer's Claim File No.	59-45P3-21J
	NAIC No.	25143
State Farm Fire & Casualty Company (Respondent)		

ARBITRATION AWARD

I, Thomas Awad, 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: IM

1. Hearing(s) held on 10/08/2024
   Declared closed by the arbitrator on 10/08/2024

   James DiCarlo from The Tadchiev Law Firm, P.C. participated virtually for the Applicant

   Taylor Grogan from Siegel & O'Leary LLP participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **$590.00**, 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 Assignor, IM, a 54 year old, was involved in a motor vehicle accident on 2/14/23. At issue in this case is $590.00 for an ultrasound performed on 5/18/23. Respondent denied the claim based upon material misrepresentation in the application for the insurance policy. The issue presented is whether the Respondent can establish a material misrepresentation in procurement of the insurance policy.

4. Findings, Conclusions, and Basis Therefor

   This case was decided based upon the submissions of the parties as contained in the electronic file maintained by the American Arbitration Association, and the oral

arguments of the parties' representatives. I reviewed the documents contained in MODRIA for both parties and make my decision in reliance thereon.

Based upon the evidence before me including the Respondent's NF-10, I find that the bills were timely and properly submitted. At the hearing, no issues were raised as to the timeliness or content of the Denials. I deem that the Applicant has established a prima facie case of entitlement to reimbursement herein based upon the submissions and that the burden shifts to the Respondent to establish its defense.

The Assignor, IM, a 54 year old, was involved in a motor vehicle accident on 2/14/23. At issue in this case is $590.00 for an ultrasound performed on 5/18/23. Respondent denied the claim based upon material misrepresentation in the application for the insurance policy.

An insurer's assertion that the subject insurance policy was obtained by fraud and/or material misrepresentations is a permissible affirmative defense that, if proved, precludes any recovery by the insured or healthcare provider who accepts an assignment of the insured's no-fault benefits. *Golden Age Medical Supply Inc. v. Clarendon National Insurance Company,* 29 Misc. 136 (A), 918 NYS 2d 397 (App. Term 2d, 11th and 13th Dists. 2010).

Section 313 of the Vehicle and Traffic Law does not permit an insurer to cancel an automobile insurance policy retroactively based on fraud or misrepresentation. See *Liberty Mut. Ins. Co. v McClellan*, 127 A.D.2d 767, 769, 512 N.Y.S.2d 161 (1987). However, an insurer may raise the issue of material misrepresentation or fraud as an affirmative defense in an action to recover No-Fault benefits under the policy. See *Matter of Insurance Co. of N. America v. Kaplun*, 274 A.D. 2d 293, 298-299, 713 N.Y.S.2d 214 (2000).

To be entitled to bar recovery, an insurer must establish that an applicant obtained the subject insurance policy by making "material misrepresentations" on the insurance policy application. See Insurance Law § 3105 (b). A misrepresentation is deemed "material" if knowledge by the insurer of the facts misrepresented would have led to a refusal by the insurer to make such contract at the rate offered. In addition, the insurance carrier must demonstrate that the applicant was acting with "a willful intent to defraud", rather than having made a "mere mistake or oversight" when filling out the application. See *Sun Ins. Co. v Hercules Sec. Unlimited*, 195 A.D.2d 24, 30, 605 N.Y.S.2d 767 (2d Dept. 1993).

NV-104

The MV-104 signed by IM indicates that the accident occurred in New York State. The insured vehicle is registered in Florida and the driver's license of the insured/driver/assignor indicates that the Assignor resides in Brooklyn, New York.

Affidavit of Andrea Huthcinson

The affiant states that she is employed by the Respondent as a claims specialist. As part of Respondent's investigation, the claim was referred to Siegel & O'Leary to conduct an Examination Under Oath (EUO) of the insured IM and the passenger TP.

The affiant states that at the time of the accident in New York the vehicle was insured at an address in Miami, Florida one and a half months prior to the accident. The affiant highlighted portions of the EUO transcripts that were considered "red flags."

TP testified that IM is TP's aunt. For the two years prior to the accident IM resided in Far Rockaway, NY. Prior to that IM resided in South Jamaica NY. TP was in the insured vehicle once per month for the preceding two years. All of these occasions occurred in Queens, Brooklyn or Bronx.

IM produced a NYS driver's license at her EUO. IM testified that that she was residing at 2451 Brickell Avenue in Miami, Florida and had been living there for more than two years. She initially denied living anywhere else in Florida, even on a temporary basis, during the five years leading up to her EUO. However, she changed her testimony when asked questions about insuring the subject vehicle with State Farm, at which time she claimed that she had "just moved" on January 1, 2023 (more than six months earlier) to the policy address located at Miami, Florida. Prior to allegedly moving to the aforementioned Brickell Avenue residence more than two years before her EUO, she testified that she lived at 901 Atlantic Avenue in Brooklyn for approximately six years. She also testified to previously living in the area of 88th Avenue in Queens but denied living anywhere else, even on a temporary basis, within the past five years. She then changed her testimony to claim that she lived in the Buffalo area for approximately six months because her son wanted to go to college there but ended up not going to school there.

IM testified that she purchased the subject Mercedes-Benz in 2020. Two years after purchasing the Mercedes on 12/29/22 she insured the vehicle in Florida. With respect to the insured 2013 Mercedes-Benz that was involved in the subject loss, IM admitted that she purchased the vehicle on Long Island, New York after allegedly moving to Miami, Florida. She stated that the vehicle was in Florida only for approximately four to five months in the more than two years that she had the vehicle prior to the February 14, 2023 loss.

She filed 2022 income tax returns and put down her Brooklyn address, despite allegedly living in the tax friendly state of Florida for a number of years at that time. At the time that IM procured the subject policy of insurance with State Farm on December 29, 2022, she testified to having accounts with three different banks. She admitted that all of these banks only had her Atlantic Avenue, Brooklyn address for her. She also testified that in 2022 and 2023, she was the sole proprietor of four separate businesses, all located on Atlantic Avenue in Brooklyn. She stated that one of those businesses also operated in Atlanta, Philadelphia, New Jersey and Albany, New York. She denied that she did any business in Florida. There was additional testimony detailing many other ties to New York State.

Affidavit of Kasia Bourgeois

The affiant is employed as an underwriter by the Respondent. Affiant states that IM insured the Mercedes with the Respondent and provided the address as to where the vehicle would be kept on a regular basis as Miami, Florida. Had State Farm been aware of the "false information" with respect to where the vehicle was going to be principally garaged at the time the policy was procured, State Farm would not have issued the policy under the terms and conditions therein. State Farm concluded that IM made intentional, material misrepresentations with respect to where the vehicle was going to be principally garaged.

Medical Records

Limited medical records have been submitted. The records and NF-3 indicate treatment was rendered in NY.

Analysis

Applicant argues that the Respondent's proof is insufficient to sustain the Respondent's burden of proof.

I find that State Farm would have issued a different type of insurance policy, namely an insurance policy pursuant to the terms of New York insurance laws rather than Florida insurance laws, had State Farm been aware the insured primarily lived in New York and primarily garaged the insured vehicle in New York rather than Florida. This is sufficient to demonstrate the insured's misrepresentations were material.

To be entitled to bar recovery, an insurer must establish that an applicant obtained the subject insurance policy by making "material misrepresentations" on the insurance policy application.

See Insurance Law § 3105 (b). A misrepresentation is deemed "material" if knowledge by the insurer of the facts misrepresented would have led to a refusal by the insurer to make such contract at the rate offered. In addition, the insurance carrier must demonstrate that the applicant was acting with "a willful intent to defraud", rather than having made a "mere mistake or oversight" when filling out the application. See *Sun Ins. Co. v Hercules Sec. Unlimited*, 195 A.D.2d 24, 30, 605 N.Y.S.2d 767 (2d Dept. 1993).

Conclusion

After careful consideration, I find that Respondent established by a preponderance of credible evidence that the instant loss involved misrepresentation in the procurement of the insurance policy. See *State Farm Mut. Auto. Ins. Co. v. Laguerre*, 305 A.D.2d 490, 491 (2d Dept. 2003); *Metro Medical Diagnostics P.C. v. Eagle Ins. Co*., 293 A.D.2d 751, 751-2 (2d Dept. 2002).

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 NY
SS :
County of Nassau

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

10/10/2024
(Dated)

Thomas Awad

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:
3962a25587072bbd54e00ebebac462a7

Electronically Signed

Your name: Thomas Awad
Signed on: 10/10/2024