

American Arbitration Association  
New York No-Fault Arbitration Tribunal

In the Matter of the Arbitration between:

Elliot H Goldzweig LCSW  
(Applicant)

- and -

Lancer Insurance Company  
(Respondent)

AAA Case No. 17-24-1371-9997

Applicant's File No. N/A

Insurer's Claim File No. 476477-04AP

NAIC No. 26077

**ARBITRATION AWARD**

I, Anne Malone, 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

1. Hearing(s) held on 03/31/2025  
Declared closed by the arbitrator on 03/31/2025

Anna Goldman, Esq. from Law Office of Anna Goldman P.C. participated virtually for the Applicant

Frank Piccininni, Esq. from Abrams, Cohen & Associates, PC participated virtually for the Respondent

2. The amount claimed in the Arbitration Request, **\$517.83**, 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 31 year old EIP reported involvement in a motor vehicle accident on March 20, 2023; claimed related injury and underwent psychological diagnostic evaluation, medical review, therapeutic interventions and sensory integration provided by the applicant on July 5, 2023.

The applicant submitted a claim for these psychological services, payment of which was denied by the respondent based on a lack of cooperation on the part of the EIP and material misrepresentations by him at the EUO.

The respondent also asserted that the bill was not received until more than 45 days from the date of service.

**The issues to be determined at the hearing are:**

**Whether the respondent established that the denial is proper based on a lack of cooperation and material misrepresentations by the EIP at his EUO.**

**Whether the respondent established its 45 day defense.**

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

This decision is based upon the documents reviewed in the Modria File as well as the arguments made by counsel and/or representative at the arbitration hearing. Only the arguments presented at the hearing are preserved in this decision; all other arguments not presented at the hearing are considered waived.

This claim was denied based upon the EIP's failure to cooperate with the respondent's investigation and was based on his EUO testimony and failure to provide responses to post-EUO requests for documents/information.

The NF 10 states in pertinent part:

This claim is denied following Lancer's investigation into the March 20, 2023 date of loss. The claim is denied based on both (a) Mohammad Gohar's failure to cooperate with Lancer's investigation and (b) his material misrepresentations made to Lancer during its investigation. That investigation included Mohammad Gohar's examination under oath conducted on June 12, 2023 along with its subsequent request for post-examination under oath verification. Lancer has no duty to provide coverage under this policy as Mohammad Gohar failed to cooperate with, and made material misrepresentations during its investigation.

Verification was received on 08/30/2023

The insured [EIP] has been insured with Lancer since 2021, he was aware of who his carrier was at the time of the loss as we had notice of claim from his attorney within 10 days of the accident. There was no reasonable explanation as to why the bills were submitted to Travelers Insurance. As Travelers is not an agent or representative of Lancer, the bill is considered submitted untimely.

Failure to cooperate with investigation

This claim was denied based upon the EIP's failure to cooperate with the respondent's investigation. In Matter of State Farm Mutual Auto Insurance Company v. Campbell, 44 A.D.3d 1059 (2006), the Court held that an insurer who seeks to disclaim liability based upon lack of cooperation of the insured, must demonstrate 1) that it acted diligently in seeking to bring about the insured's cooperation; 2) that its efforts were reasonably calculated to obtain the insured's cooperation; and 3) that the attitude of the insured was one of "willful and avowed obstruction."

Further, the court in Levy v. Chubb Ins., 240 A.D.2d 336, 337, (N.Y. App. Div. 1977) held that "[w]illful non-cooperation has been found to exist when there is a pattern of noncompliance for which no reasonable excuse can be offered ..., or where the failure to cooperate is persistent."

In support of its defense, the respondent submitted the SIU affidavit by Pam Joseph, a claims specialist who attested to the fact that police were not called to the scene of the subject accident which was alleged to have occurred in New York City at or near the intersection of 36<sup>th</sup> Street and Madison Ave. when the EIP's vehicle is alleged to have been struck by another vehicle causing injury to him.

The NF-2 indicates that the answer to questions regarding whether the EIP was in the course of his employment, lost time from work, number of days missed from work and number of days worked per day were "TBP"(to be provided.)

Ms. Joseph stated in her affidavit that in order to clarify the NF-2 responses, letters requesting an EUO of the EIP to be held on April 24, 2023, the EIP was requested to provide documents to support his answers to the questions for which insufficient responses were provided. The EIP failed to appear on that date but subsequently appeared for an EUO on June 12, 2023.

There were numerous inconsistencies in his testimony and none of the documents requested were provided between June 12, 2023 and August 30, 2023 despite verification requests from the respondent.

Ms. Joseph attested to the fact that the respondent determined that there were discrepancies in the transcript and on June 12, 2023, requested by letter to the EIP and his attorneys that certain documentation/information be provided, including where he was coming from and going to prior to the happening of the accident, whether he performed any rides for hire on the date of the subject accident, whether he had assigned any rides from any black case base company on that date, whether he was the only for-hire driver of the subject vehicle and to provide any information/documentation regarding these issues.

No responses were received until August 30, 2023 when the EIP's attorney sent respondent a letter indicating the EIP was not in possession of any of the documents/information requested despite the EIP's testimony that it was available.

Based on the EIP and/or his attorneys' failure to provide any of the requested documents/information and the inconsistency of the statements made in the EUO which were not supported, the respondent denied coverage for all pending claims.

The bill at issue, for date of service June 14, 2023 was dated July 28, 2023 and received by the respondent on August 1, 2023. The final verification was requested on August 22, 2023 and the response stating that none of the documents/information were available was received on August 30, 2023. The bill at issue was denied on September 19, 2023.

Based on the submissions, I find that the EIP willfully failed to cooperate with the investigation of this claim and to provide "arguably responsive" responses to the post-EUO requests for clarification of the inconsistent EUO testimony and to provide any of the documents he testified to in support of his claim that he was not in the course of his employment at the time of the subject accident.

Under these circumstances, the respondent has established its defense of the EIP's willful non-cooperation and material misrepresentation at his EUO and failure to provide post-EUO supporting documentation.

Based on the foregoing, the 45 day issue is moot.

**Accordingly, the claim is dismissed with prejudice.**

Any further issues submitted in the record are held to be moot and/or waived insofar as they were not raised at the time of this hearing. This decision is in full disposition of all claims for no-fault benefits presently before this Arbitrator.

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 CT

SS :

County of Fairfield

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

04/29/2025  
(Dated)

Anne Malone

**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:**  
d30e659a0fc1c6cd6336fa76e37d3152

### **Electronically Signed**

Your name: Anne Malone  
Signed on: 04/29/2025