

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK Part 59

Index Number 012243/08
Motion Cal Seq. # 9/22/08 7 9pt. 41

Muhammad Tahir MD PC
aka Carmela Richardson,
Claimant(s)/Plaintiff(s)/Petitioner(s)

DECISION/ORDER
Recitation as required by CPLR §2219(a), of the papers
considered in review of this Motion:

Papers	Numbered
Notice of Motion/OSC	<u>1</u>
Answering Affidavit	<u>2</u>
Reply	_____

-against-

Autoone Insurance Company,
Defendant(s)/Respondent(s).

Kenney, Joan M., J.

Upon the forgoing cited papers, the Decision/Order on this Motion to dismiss is as follows:

Defendant moves for an Order, pursuant to CPLR 3212, dismissing the complaint on grounds that plaintiff failed to submit to an Independent Medical Examination (IME) as duly noticed. In support of this motion, defendant annexed affidavits from persons with knowledge of the facts, attesting that timely verification requests were mailed to plaintiff.

It is well settled that pursuant to Ins Law §5106(a) and 11 NYCRR 65.15(g) (3), an insurer is required to either pay or deny the claim for no-fault benefits, within 30 days from the date the applicant provides proof of the claim, and the claim remains unpaid for the prescribed period, and if overdue shall accrue interest at a rate of 2% per month. The 30 day time limit may be tolled if the insurer makes a request for further verification (see 11 NYCRR 65.15[d]).


There is no dispute that the verification request were made as evidence by the documents annexed to the moving papers. Plaintiff's only argument in opposition hereto is an assertion, by an attorney having no personal knowledge of the facts, is that defendant has

failed to demonstrate that the IME requests were mailed and that the denial of claim was mailed. Such assertion cannot defeat the instant motion as the factual assertions made by persons with knowledge has not been rebutted here by plaintiff. Noticeably missing from plaintiff's papers in opposition is an affirmation by someone having knowledge of the facts and attesting to an assertion that plaintiff neither received denial of claim forms and/or verification requests and/or received these documents untimely and/or never received said documents. Such factual assertions may have given rise to a factual dispute to be resolved by trial or jury. As drafted, this court must accept the factual assertions made by defendant as same has been supported by persons with knowledge and there is no reason why this court would question the veracity of the statements made that timely verification requests were made to plaintiff and therefore the time to pay and/or deny this no fault benefits claim has yet to expire. Accordingly, it is

ORDERED, that defendant's motion is granted and the Clerk of the Court shall enter judgment in favor of defendant and against plaintiff, dismissing this no-fault action.

DATED: 9/22/08

ENTER:



Hon. Joan M. Kenney
Judge, Civil Court