

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - COUNTY OF NASSAU
PRESENT: HONORABLE JOHN M. GALASSO, J.S.C.

.....
LIBERTY MUTUAL INSURANCE COMPANY, LIBERTY
MUTUAL FIRE INSURANCE COMPANY,
LIBERTY INSURANCE CORPORATION, THE FIRST
LIBERTY INSURANCE CORPORATION, LM
INSURANCE CORPORATION, LIBERTY MUTUAL
MID-ATLANTIC INSURANCE COMPANY, LIBERTY
COUNTY MUTUAL INSURANCE COMPANY, AND LM
PROPERTY AND CASUALTY INSURANCE COMPANY,

Plaintiff,

Index No. 007693/12
Sequence #003
Part 37

08/20/13

- against -

FIVE BORO PSYCHOLOGICAL SERVICES, P.C., ALL
BORO PSYCHOLOGICAL SERVICES, P.C., FIVE
BORO PSYCHOLOGICAL & LICENSED MASTER
SOCIAL WORKER SERVICES, P.L.L.C., JOHN BRAUN,
PhD, VLADIMIR GRINBERG and V.G. HEALTHCARE
MANAGEMENT, INC.,

Defendants,

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Notice of Motion.....	1
Affirmation In Opposition.....	2
Reply Affirmation.....	3

Upon the foregoing papers, plaintiff's application for a default judgment pursuant to CPRL § 3215 to be entered against the defendants FIVE BORO PSYCHOLOGICAL SERVICES, P.C., ALL BORO PSYCHOLOGICAL SERVICES, P.C., FIVE BORO PSYCHOLOGICAL & LICENSED MASTER SOCIAL WORKER SERVICES, P.L.L.C., JOHN BRAUN, PhD, VLADIMIR GRINBERG and V.G. HEALTHCARE MANAGEMENT, INC for failure to answer the summons and verified complaint filed June 15, 2012 is granted in its entirety.

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A notice of appearance was filed on October 1, 2012, by the law firm of Tsirelman & Valerio who appeared the same day in opposition to the Order to Show Cause which was signed by the Special Term Justice. A TRO and stay was imposed by the Court pending the determination of the application.

By order entered February 13, 2013 with notice of entry served upon the defendants in addition to both Tsirelman & Valerio, P.C. and Gary Tsirelman, P.C., defendants were made aware that the Court granted plaintiffs a preliminary injunction. The Court noted that the two above-named law offices are interrelated, having appeared on behalf of these defendants in several actions. In fact, the office of Gary Tsirelman, P.C. opposes the instant motion.*

Defendants did not answer the complaint upon receipt of the decision with notice of entry until April 18, 2013, after a Notice of Default was served on April 5, 2013.

Defendants oppose plaintiff's motion listing several reasons but focusing on reasonable excuse and law office failure. To be successful in demonstrating to the Court a late answer should be permitted, defendants must also submit evidence of a meritorious defense. **

First, the undersigned does not credit the defense claim of law office failure. The extended history of cases concerning these defendants reveal that these attorneys were involved in constant litigation in several jurisdictions under similar circumstances. (see CPLR §§ 3012 (d), 2004 and 2005). Counsel were attuned to the Nassau County action as demonstrated when an order quashing subpoenas was improperly obtained by defendants in Kings County Civil Court.

More importantly, defendants fail to provide an affidavit of merit from someone with knowledge of the underlying facts, such as defendants Vladimir Grinberg, VG Management's principal and John Braun, PhD. (see *Midolo v. Horner*, 131AD 2d 825).

Accordingly, plaintiffs motion for a default judgment to be entered against the defendants is granted (Seq. #003). It is declared by the Court that Liberty Mutual is not obligated to reimburse the approximately \$699,018.65 in pending claims submitted by the provider defendants.

Defendants application to vacate the default is denied.

*Chambers records indicate both offices were courtesy telecopied the undersigned's decision dated February 13, 2013.

**Technically, defendants should make an affirmative motion to request relief but the Court considers defendants arguments contained in the opposition papers on the merits.

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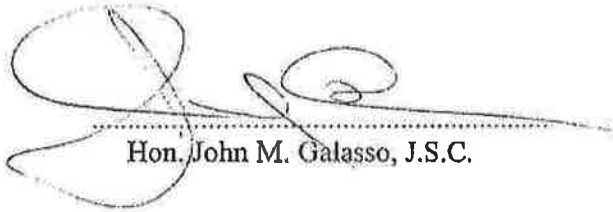
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In its complaint, plaintiff's seek not only a declaratory judgment but also a monetary recovery with interest based upon defendants' ineligibility to receive no-fault payments and the approximately \$699,516.00 it has been caused to wrongfully pay the provider defendants.

Accordingly, this matter is referred to the Calendar Control Part 2 (CCP2), to a hearing on the issue of damages to be held on December 16, 2013 at 9:30 a.m. Plaintiffs shall file and serve a note of issue, together with receipt of payment, upon the Calendar Clerk of this Court within twenty (20) business days of the date of entry of this order. The directive with respect to a hearing is subject to the right of the justice presiding on CCP 2 to refer the matter to a Justice, Judicial Hearing Officer, or a Court Attorney/Referee, as he or she deems appropriate.

The final judgment shall include an award for attorney's fees and be entered against all defendants jointly and severally.

September 19, 2013



Hon. John M. Galasso, J.S.C.

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