

**APPELLATE TERM OF THE SUPREME COURT  
OF THE STATE OF NEW YORK FOR THE 2ND, 11TH & 13TH JUDICIAL DISTRICTS**

Submitted - March 24, 2021 Term

THOMAS P. ALIOTTA, P.J.  
WAVNY TOUSSAINT  
DONNA-MARIE E. GOLIA, JJ.

-----x

DECISION & ORDER

JCC Medical, P.C., as Assignee of Damis, Magalie,  
Respondent, v Lancer Insurance Co., Appellant.

Appellate Term Docket No.  
2018-2503 K C

Lower Court # 5725/14

-----x

Hollander Legal Group, P.C.(Allan S. Hollander of counsel), for appellant.

The Rybak Firm, PLLC (Oleg Rybak of counsel), for respondent (no brief filed).

Appeal from a judgment of the Civil Court of the City of New York, Kings County (Louis L. Nock, J.), entered May 4, 2018. The judgment, entered pursuant to a decision of that court dated November 16, 2017, after a nonjury trial, awarded plaintiff the principal sum of \$3,695.34.

ORDERED that, on the court's own motion, the notice of appeal from the decision dated November 16, 2017 is deemed a premature notice of appeal from the judgment entered May 4, 2018 (*see* CPLR 5520 [c]); and it is further,

ORDERED that the judgment is reversed, with \$30 costs, and the matter is remitted to the Civil Court for the entry of a judgment in favor of defendant dismissing the complaint.

In this action by a provider to recover assigned first-party no-fault benefits, defendant appeals from a judgment, after a nonjury trial, awarding plaintiff the principal sum of \$3,695.34.

At the outset of the trial, the parties noted that, by a prior order, the issues for trial would be limited (*see* CPLR 3212 [g]) to defendant's proof of timely mailing of the examination under oath (EUO) scheduling letters and the denial of claim forms. As defendant established that the EUO scheduling letters were timely mailed to plaintiff by first class mail, contrary to the Civil Court's conclusion, it is irrelevant that defendant failed to establish that copies of such letters were also mailed to plaintiff by certified mail, return receipt requested (*see Adelaida Physical Therapy, P.C.*

*v Ameriprise Auto & Home*, 53 Misc 3d 142[A], 2016 NY Slip Op 51540[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2016]; *MML Med. Care, P.C. v Praetorian Ins. Co.*, 46 Misc 3d 127[A], 2014 NY Slip Op 51792[U] [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2014]). In addition, the testimony of defendant's no-fault claims examiner was sufficient to establish that the denial of claim forms were timely mailed (see *St. Vincent's Hosp. of Richmond v Government Empls. Ins. Co.*, 50 AD3d 1123 [2008]) to plaintiff notwithstanding that the no-fault claims examiner did not have direct supervisory authority over defendant's mail personnel (see *Delta Diagnostic Radiology, P.C. v Chubb Group of Ins.*, 17 Misc 3d 16 [App Term, 2d Dept, 2d & 11th Jud Dists 2007]).

Accordingly, the judgment is reversed and the matter is remitted to the Civil Court for the entry of a judgment in favor of defendant dismissing the complaint.

ALIOTTA, P.J., TOUSSAINT and GOLIA, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Paul Kenny". The signature is written in a cursive, flowing style with a long, sweeping tail on the letter "y".

Paul Kenny  
Chief Clerk