

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

-----X

INDEX NO. 153010/2019

IN THE MATTER OF THE APPLICATION OF NATIONWIDE
AFFINITY INSURANCE COMPANY OF AMERICA,

MOTION DATE 8/30/2019

Petitioner,

MOTION SEQ. NO. 001

- v -

KATRINA ORTIZ,

**DECISION + ORDER ON
MOTION**

Respondent.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 12, 13
were read on this motion to/for STAY.

ORDER

Upon the foregoing documents, it is hereby

ADJUDGED that the petition to permanently stay the subject
uninsured motorist benefits arbitration is granted in all
respects, without costs and disbursements to petitioner; and it is
further

ORDERED that the Clerk shall enter judgment, accordingly.

DECISION

CPLR § 7503(a) (i) provides that "proceedings to stay or bar
arbitration shall be brought in the county where the party
seeking arbitration resides or is doing business." As
respondent resides in Kings County, such county is the proper
place of venue. However, pursuant to CPLR 511(a), respondent's
remedy was to serve a demand for a change of venue before or

with her answer, which was due no later than April 28, 2019.

See CPLR 403(b). As respondent never served such demand, there is no jurisdictional impediment to this proceeding being conducted in New York County. See Kurfis v Shore Towers Condominium, 48 AD3d 300 (1st Dept 2008).

Petitioner, by affidavit of its claims representative, a person with knowledge, establishes prima facie that respondent herein did not timely serve a Demand for Arbitration. The claims representative states that petitioner did not have any knowledge of such Demand for Arbitration until it received correspondence from the American Arbitration Association dated March 6, 2019.

This court agrees with petitioner that the affirmation of respondent's counsel stating that the Demand for Arbitration was timely served has no probative value, and is insufficient to raise an issue of fact. Nor does the documentary evidence in the form of petition filed by petitioner herein in a related matter, which is appended to such attorney's affirmation, constitute an acknowledgement that such Demand for Arbitration was timely served. An examination of that prior petition demonstrates that such petition named Lamecca Hill-Perkins as the sole respondent. As petitioner has come forward with prima facie evidence that respondent never served the Demand for Arbitration upon petitioner, and that petitioner only obtained knowledge of such Demand on March 6, 2019, the court finds that the herein petition

was timely served on March 19, 2019, i.e. within the twenty-day period specified under CPLR 7503(c).

Finally, this court agrees with petitioner that the general release signed by respondent on September 19, 2017, wherein respondent released petitioner "from all. . . suits, actions, damages, claims or demands, . . ., including any and all known and unknown personal injuries Katrina Ortiz has or may have arising out of an incident that occurred at or near Linden Blvd, Brooklyn, NY 11202 on November 12, 2015, involving RICHARD L. PERKINS and LAMECCA HILL-PERKINS" applies to the arbitration at bar. See Matter of Travelers Home & Mar Ins Co v Fiumara, 164 AD3d 592 (2d Dept 2019). Contrary to respondent's argument, such release, by its terms, is not limited to a release of the counterclaim that the driver of the other vehicle involved in the collision interposed against Perkins, the driver of the vehicle in which respondent was a passenger.¹

Debra A. James
20210318203823DJAMESDD16A273C61440939F17DE3A843EF0D8

<u>3/18/2021</u>			
DATE		DEBRA A. JAMES, J.S.C.	
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

¹Nor has respondent come forward with any evidence of such counterclaim allegedly interposed against her, for example, as owner of the vehicle in which she was a passenger.