New York Official Reports

183 A.D.3d 410, 121 N.Y.S.3d 594 (Mem), 2020 N.Y. Slip Op. 02719

**1 Edward Williams, Appellant,
v
New York Property Insurance Underwriting Association, Respondent, et al., Defendant.

Supreme Court, Appellate Division, First Department, New York
11481, 151083/14
May 7, 2020

CITE TITLE AS: Williams v New York Prop. Ins. Underwriting Assn.

HEADNOTE

Insurance
Cancellation

Notice of Cancellation Made after Two Failed Attempts to Inspect Insured Premises—Failure to Overcome Presumption of Proper Mailing

Law Office of Craig A. Blumberg, New York (Craig A. Blumberg of counsel), for appellant.
Mound Cotton Wollan & Greengrass LLP, New York (Constantino P. Suriano of counsel), for respondent.

Order, Supreme Court, New York County (Robert R. Reed, J.), entered May 23, 2019, which granted the motion of defendant New York Property Insurance Underwriting Association (NYPIUA) for summary judgment dismissing the complaint, unanimously affirmed, without costs.

NYPIUA, created by statute, is required to adhere to its plan of operation (Insurance Law § 5402 [d]). The plan of operation specifically states that, "[a]ny person who, after reasonable notice, has not provided access to the insured property for inspection," is not eligible for coverage.

NYPIUA's submissions on summary judgment, which included, inter alia, the plan of operation, the deposition testimony of NYPIUA's underwriting supervisor, her affidavit, and the affidavit of an investigator assigned to inspect plaintiff's premises, were sufficient to justify finding in its favor, as a matter of law. The evidence showed that notice of cancellation was made after two failed attempts to inspect the insured premises.

Plaintiff's bare denial of receipt of the cancellation notice, **411 standing alone, did not overcome the presumption of proper mailing (*Matter of Hernandez v New York City Hous. Auth.*, 129 AD3d 446, 446 [1st Dept 2015]), particularly in light of an email forwarded to NYPIUA soon after the notice of cancellation was sent, which indicated that the cancellation notice had been received by the plaintiff's producer.

Thus, we find that Supreme Court correctly determined that NYPIUA was entitled to judgment as a matter of law (*see Tapscott Food Corp. v Lincoln Ins. Co.*, 161 AD2d 451 [1st Dept 1990]). Concur—Acosta, P.J., Renwick, Richter, González, JJ.

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