

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

RUTGERS CASUALTY INS. CO.	:	
Plaintiff,	:	JUNE TERM 2004
	:	
v.	:	NO. 486
	:	
	:	
	:	
CALVIN RICHARDSON	:	COMMERCE PROGRAM
Defendant	:	

JUDGMENT

AND NOW, this 1st day of February, 2006, it is hereby ORDERED and DECREED that judgment is entered in favor of defendant Calvin Richardson and against plaintiff Rutgers Casualty Insurance Company. The insurance policy issued to defendant Calvin Richardson by plaintiff Rutgers Casualty Insurance Company is hereby declared valid.

BY THE COURT,

HOWLAND W. ABRAMSON, J.

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Plaintiff,	:	JUNE TERM 2004
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v.	:	NO. 486
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CALVIN RICHARDSON	:	COMMERCE PROGRAM
Defendant.	:	

FINDINGS OF FACT

1. On or about May 20, 2002, defendant Calvin Richardson (“Richardson”) contacted an insurer broker for purposes of obtaining automobile coverage for a car, which he purchased in Pennsylvania. See Stipulated Facts, at ¶ 1.
2. On May 20, 2002, said broker placed Richardson with plaintiff Rutgers Casualty Insurance Company (“Rutgers Casualty”). See Stipulated Facts, at ¶ 2.
3. In 2002, Rutgers Casualty wrote automobile insurance policies only in the states of Pennsylvania and New Jersey. N.T. 5:10-14 (Sept. 19, 2005).
4. On or about May 20, 2002, Richardson submitted an application for automobile insurance to Rutgers Casualty. See Stipulated Facts, at ¶ 3.
5. In his application for insurance, Richardson stated that he resided in Philadelphia, Pennsylvania and that his car was principally garaged in Philadelphia, Pennsylvania. See Stipulated Facts, at ¶ 4. Specifically, he gave his address as 5012 West Thompson Street, Philadelphia, Pennsylvania, 19131. N.T. 5:18-22 (Sept. 19, 2005).
6. Richardson had moved to Philadelphia from New York in or about April 2002. He moved in with his ill mother, who was residing at 5012 West Thompson Street, Philadelphia, Pennsylvania, 19131, in order to help care for her. N.T. 19:20-25 to 20:2-9 (Sept. 19, 2005); N.T. 35:15-25 to 36:2 (Sept. 19, 2005); Exhibit D-1.
7. When Richardson filled out his insurance application, he presented a copy of his New York driver’s license with the application. N.T. 9:4-24 (Sept. 19, 2005); N.T.11:2-13 (Sept. 19, 2005).
8. Richardson tried to obtain a Pennsylvania driver’s license, but was unsuccessful because there were added requirements for immigrants obtaining a driver’s license after September 11, 2001, and Richardson was not a legal resident at the time. N.T. 31:19-25 to 32:2-23 (Sept. 19, 2005).

9. The policy's term was for one year. N.T. 8:22-24 (Sept. 19, 2005).
10. Rutgers Casualty sent the premium bills to Richardson each month to his address at 5012 West Thompson Street, Philadelphia, Pennsylvania, 19131. N.T. 12:20-25 to 13:2-4 (Sept. 19, 2005); N.T. 30:19-25 to 31:2-4 (Sept. 19, 2005).
11. Richardson paid the premiums to Rutgers Casualty every month. N.T. 13:3-6 (Sept. 19, 2005); N.T. 30:19-25 to 31:2-4 (Sept. 19, 2005); see Stipulated Facts, at ¶ 5.
12. The certificate of title of Richardson's car listed his address as 5012 West Thompson Street, Philadelphia, Pennsylvania, 19131. N.T. 37:2-4 (Sept. 19, 2005).
13. In May 2002, Richardson was employed in Queens, New York. N.T. 20:16-25 (Sept. 19, 2005).
14. Richardson would commute from Philadelphia to Queens on a somewhat regular basis. N.T. 21:4-25 to 23:2 (Sept. 19, 2005).
15. On or about March 18, 2003, Richardson was involved in an accident while operating the insured vehicle in New York. See Stipulated Facts, at ¶ 6.
16. At the time of the accident, Richardson was living in Philadelphia. N.T. 24:8-10 (Sept. 19, 2005).
17. Richardson received all of his medical treatment from the accident in New York. N.T. 24:11-19 (Sept. 19, 2005); N.T. 26:6-7 (Sept. 19, 2005).
18. In August 2003, after getting married to his fiancée, Richardson moved into her house in Brooklyn, New York. N.T. 23:9-21 (Sept. 19, 2005).
19. The policy was never cancelled by Rutgers Casualty between the date that Richardson filled out his application and the date of his accident. N.T. 9:25 to 10:2-6 (Sept. 19, 2005). Rutgers Casualty never sent Richardson a formal notice of cancellation of the policy. N.T. 13:10-15 (Sept. 19, 2005); N.T. 31:5-7 (Sept. 19, 2005).

CONCLUSIONS OF LAW

1. "Where the execution of a contract of insurance has been induced by fraudulent misrepresentations of the insured, the insurer may secure its cancellation." See New York Life Ins. Co. v. Brandwene, 316 Pa. 218, 221, 172 A. 669, 670 (1934).
2. The burden of proving insurance fraud is on the party alleging it, and it must be established by clear and convincing evidence. See Tudor Ins. Co. v. Township of Stowe, 697 A.2d 1010, 1016, 1997 Pa. Super. LEXIS 1749, **16 (1997).

3. In order for an insurer to carry its burden of proving misrepresentation to void a policy, it must establish: (1) that the representation was false; (2) that the subject matter was material to the risk; and (3) that the applicant knew it to be false and made the representation in bad faith. See A.G. Allebach, Inc. v. Hurley, 373 Pa. Super. 41, 52, 540 A.2d 289, 294 (1988); Baldwin v. Prudential Ins. Co., 215 Pa. Super. 434, 436, 258 A.2d 660, 661 (1969).
4. “Mere mistakes, inadvertently made, even though of material matters, or the failure to furnish all details asked for, where it appears there is no intention of concealing the truth, does not work a forfeiture, and a forfeiture does not follow where there has been no deliberate intent to deceive, and the known falsity of the answer is not affirmatively shown.” See Evans v. Penn Mutual Life Ins. Co., 322 Pa. 547, 563, 186 A. 133, 143 (1936). In other words, “in order to show a policy is void ab initio on the basis of fraud, the insurer must prove that the intent to deceive was deliberate.” See Rohm & Haas Co. v. Continental Casualty Co., 1999 Pa. Super. 102, *P30, 732 A.2d 1236, 1251-52 (1999), citing Grimes v. Prudential Ins. Co. of America, 401 Pa. Super. 245, 253, 585 A.2d 29, 33 (1991).
5. Whether a misstatement of fact made in an insurance application was made in bad faith is ordinarily a question for the finder of fact. See Evans, 322 Pa. at 555, 186 A. at 139; Grimes, 401 Pa. Super. at 249, 585 A.2d at 31.
6. Rutgers Casualty has not met its burden in proving, by clear and convincing evidence, that Richardson made fraudulent misrepresentations on his insurance application.
7. Rutgers Casualty has failed to establish that Richardson knew his representations to be false, and made the representations in bad faith. Rutgers Casualty has failed to prove that Richardson had a “deliberate intent to deceive.”
8. Since Rutgers Casualty has not shown by clear and convincing evidence that Richardson deliberately attempted to defraud Rutgers Casualty, the policy is valid.

FINDING

The Court finds in favor of defendant Calvin Richardson. An Order consistent with this finding will be issued.

BY THE COURT:

Dated: February 1, 2006

HOWLAND W. ABRAMSON, J.