

**Matter of Clarendon Natl. Ins. Co. v State of
N.Y. Workers' Compensation Bd.**

2007 NY Slip Op 30540(U)

March 29, 2007

Supreme Court, New York County

Docket Number: 0111798/2006

Judge: Paul G. Feinman

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

PRESENT: PAUL G. FEINMAN *Justice*

PART 52

Index Number : 111798/2006

CLARENDON NATIONAL INSURANCE

vs

WORKERS' COMPENSATION BOARD

Sequence Number : 001

VACATE

INDEX NO. 111798/06
MOTION DATE 1/17/07
MOTION SEQ. NO. 001
MOTION CAL. NO. 3

this motion to/for VAC AUSD

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits -- Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1

2

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *petition is decided*

*in accordance with annexed decision,
order & judgment.*

Country copies mailed to counsel.

UNRECORDED
This judgment has not been recorded in the County Clerk
and notice of entry cannot be given until 12:00 p.m. To
obtain entry, counsel or another person whose name must
appear in person at the Judgment Clerk's Desk (Room
11B).

Dated: 3/27/07

BVF

J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 52

-----X
In the Matter of the Application of CLARENDON
NATIONAL INSURANCE COMPANY,

Petitioner,

For an Order pursuant to Article 75 of the CPLR to
Vacate an Arbitration Award

Index Number 111798/2006
Mot. Submit Date Jan. 17, 2007
Mot. Seq. No. 001
Mot. Cal. No. 3

- against -

STATE OF NEW YORK WORKERS'
COMPENSATION BOARD,

Respondent.

**DECISION, ORDER AND
JUDGMENT**

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Papers considered in review of this petition to vacate arbitration award:

Papers	Numbered
Notice of Petition, Affidavits, Memo of Law.....	<u>1</u>
Answer	<u>2</u>

PAUL GEORGE FEINMAN, J.:

In this Article 75 proceeding, petitioner seeks to vacate the arbitration decision and award of February 28, 2005 in the amount of \$25,057.98. For the reasons which follow, the petition is denied and the arbitration is confirmed.¹

Petitioner Clarendon National Insurance Company alleges that it first learned of the arbitration when it received a “second request prior to referral to collection” from the respondent

¹ On November 15, 2006 the parties stipulated that petitioner would submit an amended petition by December 15, 2006, and respondent would submit an answer or opposition thereafter. The matter was adjourned to January 17, 2007 for final submission. However, no amended papers were received, and therefore the court has considered only the original petition and answer were in the court file as of the date of decision.

dated May 23, 2006, advising of an arbitration decision dated March 7, 2005 concerning the insured Catherine Pedersen (Pet. Ex. A, Duckwiler Aff. ¶¶ 3-4; Ex. C). Petitioner's claims adjuster avers that upon investigation, she found no policy issued to Pedersen, and after obtaining a copy of the police report concerning the motor vehicle accident that gave rise to the claim, requested information from the New York Department of Motor Vehicles (DMV) about the Pedersen vehicle (Pet. Ex. A, Duckwiler Aff. ¶¶ 5-6). The DMV records indicated that an insurance policy was issued by Utica Mutual Insurance Policy for the Pedersen vehicle (Pet. Ex. A, Duckwiler Aff. ¶ 7; Ex. E). Petitioner argues that it was not a proper party to the arbitration, and that the award was entered in error. It moves to vacate the arbitration award in the interests of justice and equity.

An arbitration award may be vacated only where the rights of the complaining party were prejudiced by corruption, fraud, or misconduct in obtaining the award; the arbitrator was partial; the arbitrator exceeded his or her powers or failed to make a final and definite award; or the statutory procedure was not followed (CPLR 7511[b]). Questions of law and fact are not reviewable by the court unless the award is so irrational that vacatur is required (*North Syracuse Cent. School Dist. v North Syracuse Educ. Assn.*, 45 NY2d 195, 200 [1978]; *Cohn v Royal Globe Ins. Co.*, 49 NY2d 942 [1980]). Although Clarendon argues it was not the insurer, respondent points to the police report from the motor vehicle accident which indicates that, as concerns the Pedersen vehicle, the insurer was "075," the code number assigned by the New York State Insurance Department's website of insurance companies to Clarendon National Insurance Company (Answer. ¶ 2A; Ex. A, B). The insurance code written on the police report has been held "presumptive proof" of insurance coverage (*Schlesinger v Nationwide Mut. Ins. Co.*, 294 AD2d 421, 422 [2d Dept. 2002]). Thus, it cannot be found that the arbitrator "irrationally" determined that Clarendon was the insurer and

liable for coverage.

Petitioner does not argue that there was corruption, fraud, or misconduct in the obtaining of the award, but only that it did not receive notice of the arbitration and therefore did not defend its rights. Although it does not and cannot seek to vacate its default pursuant to CPLR 5015, even under that more lenient standard which requires the movant to show a meritorious defense for the default (*Kwong v Budge-Wood Laundry service, Inc.*, 97 AD2d 691 [1st Dept 1983]), petitioner does not establish the merit of its claim. Respondent offers proof of service of the application for arbitration and related documents in the form of a copy of the certified mail receipt and certified mail card addressed to Clarendon at its New York City offices, the latter of which was signed for by "R Olivier" on "12-20." (Answer Ex. C). Although neither the receipt nor the card is postmarked, respondent also submits copies of the arbitration documents which include the first page of the decision form issued by the Arbitration Forums, Inc. Personal Injury Protection Subrogation Forum, on which appears a signed certification of service dated December 14³, 2004, stating that three copies of the application were mailed to the respondent, i.e., petitioner Clarendon, at its address in New York, notably the same address as that on the certified mail card and receipt and that listed with the State Insurance Department (Answer Ex. C). The arbitration was noticed for February 28, 2005 and listed Clarendon as the respondent, the insured as "Cathrine Pedersen" (sic) and indicated the same New York address for the insurer as noted above (Answer Ex. D). The decision, issued on March 7, 2005 on default, determined that the Workers' Compensation Board proved 100% liability against Clarendon, as Pedersen "lost control & struck applicant in rear." (Answer Ex. E). In answer to all of the above documentation, petitioner asserts only that its first notice of the arbitration was in May 2006. It does not state that the address to which the documents were mailed was the incorrect

address, that the contact name on file with the State Insurance Department was the wrong name, or that "075" was not the number assigned to it by the State Insurance Department. It merely offers a bald denial of receipt which is insufficient to rebut the totality of respondent's proof of notice of the arbitration (*see, Kelley v Chavez*, 33 AD3d 590, 591 [2d Dcpt. 2006] [the bare denial of service was insufficient to warrant a hearing on traverse]). Accordingly, the petition to vacate the arbitration award of March 7, 2005, is denied, and the award rendered in favor of respondent State of New York Workers' Compensation Board against petitioner Clarendon National Insurance Company is confirmed. It is

ORDERED and ADJUDGED that the petition to vacate the arbitration award of March 7, 2005 is denied; and it is further

ORDERED and ADJUDGED that respondent State of New York Workers' Compensation Board, having an at address 215 West 125th Street, New York NY 10027, have judgment and recover against petitioner Clarendon National Insurance Company, having an address at 1177 Avenue of the Americas, New York, NY 10036 in the amount of \$25,057.98, plus interest at the rate of 9 % per annum from the date of accident, 12/17/02, as computed by the Clerk in the amount of \$ _____, together with costs and disbursements in the amount of \$ _____ as taxed by the Clerk, for the total amount of \$ _____, and that the petitioner have execution therefor.

The foregoing shall constitute the decision, order and judgment of this court.

E N T E R :

Dated: March 29, 2007

New York, New York

(2007 Pl 52 D & O_111798_2006_001)

4