Matter of American Country Ins. Co. v Allstate Ins. Co.
2007 NY Slip Op 32080(U)
June 29, 2007
Supreme Court, New York County
Docket Number: 0111310/2006
Judge: Lewis Bart Stone

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

PRESENT: HON. LEWIS BART STONE PART 505

Index Number : 111310/2006

AMERICAN COUNTRY INS.

VS

ALLSTATE INS.C O.

Sequence Number : 001

VACATE OR MODIFY AWARD

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☒ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed decision and order

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

Dated: 29 June 07

HON. LEWIS BART STONE J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 50S

In the Matter of the Application of AMERICAN COUNTRY INSURANCE COMPANY	:	
Petitioners,	:	DECISION AND ORDER
-against-	:	
ALLSTATE INSURANCE COMPANY and GOVERNMENT EMPLOYEES COUNTRY INSURANCE,	:	INDEX NUMBER 111310/06
Respondents.	:	

Hon. Lewis Bart Stone, J

This proceeding was commenced by Petitioner, American Country Insurance Co. ("American") on August 11, 2006 pursuant to Article 75 of the Civil Practice Law and Rules ("CPLR") to vacate two arbitration awards, one dated December 19, 2005 and the other June 6, 2006, and to declare that American has no liability for any claims asserted in the arbitrations which resulted in the three awards. Respondents, Allstate Insurance Company ("Allstate") and Government Employees Insurance Company ("GEICO") were the carriers for the other two vehicles involved in a three-car auto accident which occurred on May 19, 2005, and American was the carrier for the third.

By Notice of Motion dated November 27, 2006, Allstate cross moved to enforce both of the awards which American sought to vacate.

Not only were there three cars involved in the accident, there were also three separate arbitrations among various of the carriers before Arbitration Forums, Inc., ("Forums"), the arbitration association designated to resolve inter-carrier claims arising out of motor vehicle accidents in New York. While arbitration was designed to have simplified and sped the resolution of inter-carrier claims arising out of automobile accidents, in this situation, it has complicated and delayed such resolution.

The first arbitration ("Arbitration No. 1") conducted by Forums under docket A066-71840-05-00, was commenced on August 5, 2005 by Geico against Allstate and American. This arbitration was heard on December 19, 2005, and American agreed that it received the arbitration decision on December 27, 2005.

The second arbitration ("Arbitration No. 2") conducted by Forums under docket A066-72839-05-00, was commenced on October 3, 2005 by Allstate against American and Geico. This arbitration was heard before a different panel on December 19, 2005, the same date as Arbitration No. 1.

The third arbitration ("Arbitration No. 3") conducted under docket I068-50306-06-00, was commenced on January 11, 2006 by Allstate against American and Geico for "PIP benefits" (base transfer). American appeared at this arbitration which was heard before yet a different panel on June 6, 2006.

The arbitration results allocate responsibilities for the accident differently, and are therefore inconsistent.

American asserts that although it had notice of and participated in Arbitration No. 1 and No. 3 and received notice of such decisions, it had no notice of, accordingly did not participate in Arbitration No. 2. Citing CPLR §7511(b)(2), American seeks to vacate Arbitration No. 2. American further asserts that if Arbitration No. 2 is vacated because of faulty notice, it may not be recommenced, as Arbitration No. 1, in which all three carriers participated, and which was unchallenged by the other two carriers, would constitute res judicata as to the subject matter of Arbitration No. 2. Further, American asserts as the finding in Arbitration No. 1 was that American's insured was without fault, Arbitration No. 3, by which Allstate sought contribution from American for a separate type of coverage on a fault theory, also should be vacated on the grounds of res judicata.

American also asserts that the award for Arbitrations No. 2 and 3, being inconsistent with Arbitration No. 1 should be vacated on the grounds that such awards were irrational and in violation of a strong public policy.

Allstate asserts that in fact American did receive notice of Arbitration No.2 and that accordingly, its failure to participate was irrelevant, as the arbitration rules of Forums, which the carriers had agreed to only require that notice be given to bind a

party. To support its position, Allstate submitted an affidavit of the Service Quality Manager of Forums, that Forums send the hearing notice as to Arbitration No. 2 to American by certified mail on November 2, 2005 and mailed a copy of the decision to American on December 23, 2005. Further, Allstate asserts that by waiting until August 11, 2006 to move to dismiss Arbitration No. 2, American had failed to so move within the 90 day period under CPLR §7511, within which a challenge to an arbitration may be made, or the thirty day period for such motions under Forums' rules. Allstate asserts notice of the decision was given by Forums on December 23, 2005.

Allstate further asserts that Arbitration No. 3 was not barred by earlier arbitration decisions. Allstate also moves for counsel fees.

In reply, American asserts it moved its offices in "late spring 2006" from Elmhurst, NY to Manhattan and that may have been the reason that no notice was received.

THE ROCKLAND DECISION

As if the procedural confusion discussed above was not enough, Allstate also moved to enforce its award against American in Arbitration No. 2 by filing a Notice of Petition dated July 31, 2006, pursuant to CPLR Art. 75, in Supreme Court,

Rockland County. On August 25, 2006, Hon. William K. Nelson, Acting Supreme Court Justice in Rockland County, issued an order confirming such award, reciting that Allstate's Petition was not opposed. Counsel for American subsequently advised Allstate that American did not have notice of such Petition and such decision and order was vacated on consent, with the Rockland County Court holding the Petition in abeyance, pending the outcome of this case.

CONCLUSIONS OF LAW

The strange fact pattern presented in this proceeding leaves egg on the administrative faces of all parties. It appears that Forums had no mechanism in place to prevent participants in its system from simultaneously pursuing different and duplicative arbitrations against each other. It also appears that Allstate, by pursuing two separate arbitration procedures involving the same accident and accident issues on one day lost control of its files.[1] It is further clear that American's own office probably lost track of notices sent from different sources and web postings which bound it, blaming a subsequent move on this loss of control.

[1] The only other possibility, that Allstate intentionally brought Arbitration No. 2 with the hopes of slipping something by, is unsupported by any evidence on the record, and is not asserted by American.

While those respective lapses might form the basis for the court to determine which party to estop to resolve this dispute, the Court need not reach such issues with respect to Arbitration No. 2 as this Court is bound by CPLR §7511 which establishes a clear 90-day statute of limitations during which an aggrieved party to an arbitration proceeding must act to be entitled to court intervention after an arbitration award is rendered. By commencing this proceeding on August 11, 2006, American has failed to act in a timely manner.

NOTICE

Central to American's claims in this proceeding to set aside Arbitration No. 2 is the issue of notice. American claims that it had no notice of such arbitration until it received a letter on May 12, 2006 when it received a copy of the Decision notice.[2]

NOTICE REQUIRED

Although the CPLR sets forth exacting notice and service requirements for the commencing of an action or proceeding such as the Rockland County CPLR Article 75 proceeding and for the service of subsequent motions and notices, procedural requirements of the CPLR do not control the procedural process of arbitration. As parties may elect to arbitrate, they may elect to adopt such reasonable procedural

[2] American also denied being served with Allstate's Article 75 petition.

steps and requirements as they wish for an arbitration. As both the New York Arbitration Law (CPLR Art. 75) and Federal Arbitration Act (FAA) generally require the enforcement of arbitration agreements, agreements relating to procedural aspects of arbitration are equally subject to such enforcement rules, except only to the extent they violate the respective New York or Federal arbitration laws. American has made no claim of any such violation.

As Allstate and American have stipulated as to the re-opening of the Rockland County proceeding, where the CPLR and not Forums' arbitration rules governs the rules of service and notice, this Court need not address aspects of proper service of the Petition in such proceeding.

Under Forums' rules, notices of hearings are given by Forums once a party has requested arbitration. Forums Automobile Arbitration Rules and Regulations, Rule 3-1 provides that "AF will transmit or mail Hearing Notices to all parties at least 30 days prior to the initial hearing date."

American's assertions that it had not received or been aware of the notices is legally irrelevant. In signing on to arbitration by Forums, American agreed that notice could be served on it by mail, which notices would be binding. Allstate has presented proof of such mailing in the form of an affidavit from a responsible official of Forums. While American might have agreed to different rules such as for example,

requiring notices only to be effective upon receipt, or only when American became aware of the contents of a notice or American did not. American is therefore bound by Forums rules. Thermasol, Ltd. v. Dreiske, 52 NY2d 1069 (1981), cert. den. 454 US 826 (1981). Further, American's objection to the proof of mailing of Notices by Forums that mailing were made to a post office box, is equally irrelevant. A party to an arbitration may agree, as did American, as to where notices are to be sent. Such party cannot later complain of notices given in the fashion to which it agreed on to the address it had supplied.

New York law presumes that a letter properly addressed, stamped and mailed has been duly delivered. See Trusts Guar. Co. v. Bernhardt, 270 NY 350 (1936) (testimony that the notice was not received is not competent as bearing on whether it was mailed). Denial of receipt alone is thus insufficient to overcome this presumption. Clearly, a letter not properly addressed cannot rely on this presumption. See Connolly v. Allstate Ins. Co., 213 AD2d 787 (3rd Dept. 1995), (incorrect post office box number on address and the recipient attorneys' denial receiving the letter is sufficient to find notice ineffective in the context of an arbitration proceeding). However, even a misaddressing is not always fatal if the party asserting service can show by proof from the post office that they would have delivered the letter in any event. See Brounell v. Feingold, 82 AD2d 844 (2nd Dept. 1981), (postmaster

affirmation that post office routinely processed mail improperly addressed to Bethpage and Old Bethpage is sufficient to overcome incorrect address problem). See also Taft v. Lesko, 182 AD2d 1008 (3rd Dept 1992) (affidavit that a mailing of a copy of a service to a defendant at "Minisink Road, Goshen" would be delivered to the defendant from the letter carrier who delivered the mail to Minisink Road was sufficient to overcome the address issue). In any event, there was no showing here of any improper or incorrect address or any evidence to counter the assertions that Forums sent proper notice.

Thus, an assertion in an arbitration that a party had not received notice is insufficient, even if proved, to constitute a basis to set aside an arbitration award where the parties have agreed that mailing of notice is sufficient. The only basis to set aside an award because of faulty notice is where a party can establish that notice was not properly sent. American has made no such showing, and Allstate has submitted prima facie evidence that notices were duly sent.

Further, in arbitration under Forum's auspices, most notices were to be given by Forums, a neutral party to the proceedings. While a courts might more closely inspect allegations of notice given, against allegations of no notice received, where a party interested in the proceedings gave the only notices, such is not true here. Forums, a neutral, gave American several notices. American did not contest that

other notices (for Arbitrations No. 1 and No. 3) sent to its post office box were not received, and its participation in such arbitration on the dates established by Forums for such hearings confirms that it had received notice at such address. American further acknowledged that it was moving and that notices might have been lost as a result.[3] However, moving problems and the responsibility to answer to claims was a responsibility of American, which as a carrier cannot hide behind its own office failures.

Accordingly, under any reading of the 90 day rule, whether it was to be counted from the date of on-line publication of the award of Arbitration No. 2 on December 19, 2005, the mailing of the award on December 23, 2005, or even the date of the demand letter from Allstate for payment of the award sent on February 24, 2006, American's motion to set aside Arbitration No. 2 must be denied as untimely under CPLR §7511.

Similarly, Allstate's cross motion to enforce the award Arbitration No. 2 must be denied. Prior to Allstate's Cross Motion, Allstate, on July 31, 2006, had already moved in Rockland County Supreme Court to enforce such award. As the Rockland proceeding preceded Allstate's Cross Motion and seeks relief identical to that sought

[3] However, the move occurred substantially after the questioned notices for Arbitration No. 2 were given.

in the Cross Motion and the Rockland proceeding is still pending, it would be improper for this Court to address such issue. The Court, however, will reserve jurisdiction should the Rockland County proceeding be dismissed for failure of service or otherwise terminated without prejudice.

That leaves Arbitration No. 3. Here American has petitioned to set aside the award and Allstate has cross moved to enforce the award.

Although American participated in Arbitration No. 3 and lost, American now asserts that the result in Arbitration No. 1, that American had no liability, should have been res judicata with respect to Allstate's claims on Arbitration No. 3.

Thus, American asserts that the arbitrators' decision in Arbitration No. 3 was erroneous. However, neither mistake of fact nor mistake of law are grounds for the reversal of an arbitrator's decision. While there is a doctrine of manifest disregard of law under which a court, bound by the Federal Arbitration Act, may set aside an arbitrator's decision where the arbitrator has made a mistake of a clear principle of law notwithstanding that such legal principle had been clearly and expressly brought to the arbitrator's attention, such doctrine does not apply here.

Such principle requires that the disregarded law be brought to the arbitrators attention and be clear and unequivocal. Here, the unique problem of two inconsistent arbitration awards (which are otherwise not remarkable as inconsistency is inherent

result of arbitration) one finding fault and the other none rendered on the same day made any ruling as to which decision constituted res judicata so unclear as to fail to come within the ambit of "manifest disregard."

In any event, it is not clear that the decisions in either Arbitration No. 1 nor Arbitration No. 2 could be collateral estoppel or res judicata in any case.

Article Third of Forums Rules, entitled "Decisions" provides:

> "The decision of the arbitrators...is neither res judicata nor collateral estoppel to any other claim or suit arising out of the same accident occurrence or events, except where an applicant seeks recovery of supplemental damages allowed under the Awards section of the rules."

As the PIP coverage is another claim which arose out the same accident under this rule, to which American agreed, res judicata and collateral estoppel principles do not apply.

American also seeks to set aside Arbitration No. 3 on the grounds it was irrational. While irrationality has been generally recognized by the Court of Appeals as a non-statutory basis to set aside an arbitration award, case law does not make it clear what such term means. Bank of American Securities v. Knight, 4 M.3d 756 (Sup. Ct. NY County 2004). At best it is a showing that the result, on its face makes no sense. Here, the decision in Arbitration No. 3 was a fully sensible result on its face. Had Arbitration No. 3 been held before Arbitrations No. 1 and No. 2, there

would have been no basis to even suggest it were irrational. While it does differ in its factual conclusion of liability, such is a factual finding. While such finding might even be in error, it was not irrational.

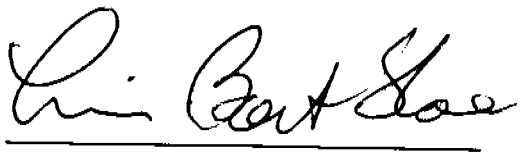
American also asserts that Arbitration No. 3 must be set aside as against public policy. Such non-statutory ground for setting aside an arbitral award also exists in New York. However, public policy interference with arbitration have been limited to cases whether the subject matter of the arbitration was inappropriate or violated public policy (such as an arbitration awarding a divorce or adoption) or whether a remedy in the award was inappropriate or unenforceable as a matter of public policy. Such issues do not exist here.

Finally, Allstate has requested legal fees. This Court declines to award them. The parties have agreed to resolve their disputes by arbitration and the question of entitlement of Allstate to legal fees is just one more dispute which must be submitted to Forums. Should an arbitration award for such legal fees be made, the parties are free to apply to this Court for its enforcement or vacation under CPLR Article 75.

This is the Decision and Order of the Court.

Settle Judgment.

DATED: JUNE 29, 2007
NEW YORK, NEW YORK



Hon. Lewis Bart Stone
Justice of the Supreme Court