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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present:
HON. DANIEL PALMIERI
Acting Justice Supreme Court

TRIAL TERM PART: 48

LINDSAY GROBMAN,

Plaintiff,

-against-

RHONDA CHERNOFF, RHONDA GROBMAN s/h/a RHONDA GLOBMAN, ADAM J. CHERNOFF and ATAOLLA AJOUDEN,

Defendants.

INDEX NO.: 024250/98

MOTION DATE:6-9-08
SUBMIT DATE:7-30-08
SEQ. NUMBER - 002

MOTION DATE: 7-30-08
SUBMIT DATE: 7-30-08
SEQ. NUMBER - 003

The following papers have been read on this motion:

Notice of Motion, dated 5-8-08.....1
Affirmation in Partial Opposition, dated 7-9-08.....2
Notice of Cross Motion, dated 7-9-08.....3
Affirmation in Opposition to Cross and in Reply, dated 7-23-08.....4
Reply Affirmation, dated 7-28-08.....5

The motion and cross motion to confirm an arbitration award, pursuant to CPLR Article 75, are confirmed in accordance with this Decision and Order.

Plaintiff was injured in an automobile accident in 1996 and instituted an action against defendants (Index Number 24250/98). In June of 2000, defendants Chernoff and Rhonda

Grobman (hereinafter defendants) were found by a jury to be 100% at fault and in July, 2000, a jury awarded damages. Both sides appealed, the judgment was reversed, and a new trial ordered. (2AD3d 373).

Thereafter the parties agreed to submit the dispute to arbitration for resolution and entered into an agreement to that effect.

A dispute then arose as to whether the arbitrator should consider the issue of serious injury which was ultimately resolved in plaintiff's favor *ie* that the issue had previously been decided by the jury in the damages phase of the trial on which the judgment was reversed and thus was not to be decided anew in the arbitration (35 AD3d 658).

The arbitration proceeded on that basis with parameters of no less than $10,000.00 nor more than $150,000.00, as stated in the original (and only) arbitration agreement, and an award of $125,000.00 in favor of plaintiff followed.

In this motion to confirm the award, the principal issue is whether plaintiff is entitled to interest on the arbitration award computed from the date of the jury verdict in her favor on the issue of liability, or as defendants contend, computed from the date of the arbitration award. The decision of the arbitrator does not allude to the subject and neither side contends that the question was presented to the arbitrator.

The plaintiff's moving papers make no mention that she is seeking prejudgment interest on the award and fails to disclose that prior to so moving, defendant had tendered a check in the amount of the arbitration award which plaintiff's counsel has retained but not negotiated for payment, nor does the cross motion by defendant raise the issue since that

motion seeks the same relief as plaintiff, to confirm the award and to compel the issuance of a release. Defendant's submission in opposition to plaintiff's motion to confirm brings to the forefront defendants' perception that plaintiff is seeking prejudgment interest on the award, a perception that is confirmed by plaintiff's opposition/reply.

Courts are empowered to enter judgment on an arbitration award, however, courts may not pass upon the tenability of a claim or the merit of the dispute CPLR §7501. Courts are required to confirm an award unless an award is vacated or modified. CPLR §§7510 and 7511.

However, grounds for vacatur or modification are limited to specific reasons, none of which are applicable here, as neither party seeks either vacatur or modification CPLR §7511(b) (vacating award) and (c) (modifying award).

In general, where summary judgment or a verdict rendered has been granted on the issue of liability, interest on a judgment ultimately entered in a motor vehicle accident case begins to run from the date of the Court's decision on the motion or the jury's verdict. CPLR §5002, *See, e.g., Odumbo v Perera,* 50 AD3d 658 (2d Dept. 2008); *Van Nostrand v Froehlich*, 44 AD3d 54 (2d Dept. 2007); *Eisenberg v Rockland County,* 19 AD3d 536 (2d Dept. 2005). However, this maxim is not applicable to this case because the parties agreed to submit the entire dispute to arbitration. As to arbitration, it has been held that an arbitrator's power includes pre-award interest as part of a decision. *West Side Lofts, Ltd v. Sentry Contracting Inc.*, 300 AD2d 130 (1st Dept. 2002).

New York has a long and strong public policy favoring arbitration and New York Courts will interfere as little as possible with the freedom of consenting parties to submit

disputes to arbitration. *Stark v. Molod, Spitz DeSantis & Stark, P.C.*, 9 NY3d 59 66 (2007).

Although the Rules of Procedure of the arbitration forum have not been submitted, the agreement to arbitrate that has been submitted provides that "in the case of arbitration, that the parties will be bound by the ... decision" and that "any and all pending litigation arising from this action shall be discontinued with prejudice upon the determination of this matter."

By submitting their dispute to arbitration, the parties agreed that the issue of interest on the award was to be included within the scope of the award. When a broadly worded clause is used in an agreement to arbitrate, any restrictions on the issues must be specific. *Silverman v. Benmore Coats, Inc.*, 61 NY2d 299, 307-08 (1984). Since there were no restrictions on the issues of the arbitration and given the previous history of dispute on the issue of whether serious injury was within the purview of the arbitrator, there was no bar to specifically submitting or withholding the question of interest to the arbitrator. By not limiting the issues, by not submitting the question and by reason of the minimum and maximum limitations, the parties are deemed to have vested the arbitrator with the authority to consider or ignore the question and there is no way for this court to discern if and to what extent the issue was raised or considered. *Brown & Williamson Tobacco, Corp., v. Chesley*, 7 AD3d 368, 371-72 (1st Dept. 2004); *Cheng v. Oxford Health Plans, Inc.*, 15 AD3d 207 (1st Dept. 2005).

It is well settled that, upon confirmation of an arbitration award, interest should be provided from the date of the award. *Board of Education of the Central School District No. 1 of the Towns of Niagara, Wheatfield, Lewiston and Cambria v. Niagara-Wheatfield*

Teacher's Association, et al., 46 NY2d 553(1979). *See also Matter of McEntee v. Motor Vehicle Accident Indemnification Corporation*, 29 AD2d 68 (1st Dept. 1967), cited with approval in, *Board of Education of the Central school District No. 1 of the Towns of Niagara, Wheatfield, Lewiston and Cambria v. Niagara-Wheatfield Teacher's Association, et al., supra.*

Further, a party may move to confirm an arbitration award despite the fact that payment has been tendered by the defendant. *See, e.g., Matter of Ricciardi v. Travelers Insurance Company*, 102 AD2d 871 (2d Dept. 1984); *Matter Aetna Casualty & Surety Company v. Mantovani*, 240 AD2d 566 (2d Dept. 1997); 23 A Carmody-Wait 2d § 141-237. However, interest in such an action is limited to the period of time from the arbitrator's award to the tender of payment. *See, e.g., Venables v. Painewebber, Inc.*, 205 AD2d 788 (2d Dept. 1994); *Matter of Ricciardi v. Travelers Insurance Company, supra*; 23 A Carmody Wait 2d 141-247.

Further, the award must be confirmed by the court, *Geneseo Police Benevolent Assn., Council 82, Amer. Federal of State, County & Municipal Employees, AFL-CIO v. Village of Geneseo*, 91 AD2d 858 (4th Dept. 1982), *affd.* 50 NY2d 726, notwithstanding that the amount awarded has been tendered. *Id. Church Mut. Ins. Co. v. Kleingardner*, 2 Misc 3d 676, (684 Sup. Ct. Oswego Cty. 2003).

More recently, it was held that where an award was made to an employee who had been working out of title, interest was required to be calculated from the date of the award rather then from the date the employee was entitled to compensation, a difference of approximately one year. *Doyle v. County of Westchester*, 43 AD3d 1055 (2d Dept. 2007).

Thus, this Court, in deciding a motion to confirm an award, has no authority to award prejudgment interest thereon unless the award specifically provides for such interest and upon confirmation, interest is to be calculated from the date of the award. *Securities & Investment Planning Company v. J.P.C. Contracting Company*, 5 Misc. 3d 1020A, 3 (Sup. Ct. Nassau Cty. 2004) citations omitted.

In this case, the Court will confirm an award granting interest from the date of the decision of the arbitrator, however, since defendants tendered a check for the full amount of the award, in determining the portion of the judgment from the date of award to the date of entry, interest on the tendered amount is tolled from the date payment was received.

The motion and cross motion are both granted, the arbitration award is confirmed in the amount of $125,000.00 with interest thereon at the judgment rate from the date of the award with credit to be given to defendants for the payment that was tendered, computed from the date of receipt of the check.

This shall constitute the Decision and Order of this Court.

Submit judgment.

ENTER

DATED: August 4, 2008

HON. DANIEL PALMIERI
Acting Supreme Court Justice