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

RAKOWER

PART 5

Index Number : 115848/2008

MVAIC

VS.

INTERBORO MEDICAL CARE & DIAGNOSTIC

SEQUENCE NUMBER : # 001

VACATE ARBITRATION AWARD

Justice

INDEX NO. 115848-08

MOTION DATE

MOTION SEQ. NO. #001

MOTION CAL. NO.

were read on this motion to/for

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion

DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION / ORDER

FILED

MAR 12 2009

COUNTY CLERK'S OFFICE NEW YORK

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

Dated: 3/9/09

EILEEN A. RAKOWER J.S.C.

J.S.C.

Check one: ☐ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 5

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In the Matter of the Application of MVAIC
to Vacate an Arbitration Award

MVAIC

Petitioner,

- against -

INTERBORO MEDICAL CARE & DIAGNOSTIC
PC A/A/O GILBERTO MORALES

Respondents.

Index No.
115848/08

DECISION
and ORDER

----------X

HON. EILEEN A. RAKOWER, J.

Petitioner, MVAIC, files this petition seeking an order from the court vacating the award of the Master Arbitrator dated August 14, 2008 and the lower Arbitrator's award dated May 9, 2008, entering judgment in favor of MVAIC and dismissing the claim with prejudice. Respondents, Interboro Medical Care & Diagnostic PC ("Interboro") A/A/O Gilberto Morales, do not submit papers.

This proceeding stems from an accident wherein respondent Gilberto Morales was hit by a vehicle while riding his bicycle on Roosevelt Avenue and 81st Street in the County of Queens, State of New York on April 17, 2005. On May 12, 2005 respondents submitted a Notice of Intention to Make a Claim to MVAIC. Thereafter, respondents commenced an arbitration proceeding against MVAIC seeking reimbursement of $12,225.44 for various medical and testing services rendered by respondent Interboro. The lower Arbitrator, on April 17, 2008, after a hearing, rendered an award against MVAIC in the amount of $12,225.44, together with attorney fees and interest. MVAIC appealed and the matter was reviewed by a Master Arbitrator. The Master Arbitrator, by a decision issued August 14, 2008, affirmed the lower Arbitrator's award in its entirety.

MVAIC, in support of its motion, submits: (1) a copy of the lower Arbitrators' award, dated April 17, 2008; a copy of the Master Arbitration Award, dated August 14, 2008; a copy of the police report; and a copy of the Notice of Intention to Make Claim, dated May 12, 2005. MVAIC argues that both the lower and master arbitrator's decisions were arbitrary, capricious, irrational and incorrect as a matter of law.

MVAIC claims that the police report listed the vehicle which struck Mr. Morales as being owned by Zulma Pagan and being insured under policy number 506010, with an expiration date of December 31, 2005. However, on Mr. Morales' Notice of Intention to Make Claim, he states that there is "no info" on the line next to "insured by." In light of this discrepancy, MVAIC asserts that it made repeated requests of respondents to provide proof that there was no coverage on Ms. Pagan's vehicle at the time of the accident. MVAIC argues, it was respondents' burden to investigate and exhaust all possibilities of obtaining coverage from Ms. Pagan's insurance company prior to submitting its uninsured vehicle claim. MVAIC claims that respondents did not submit such information. Thus, MVAIC argues, that the arbitration award was incorrect as a matter of law since the arbitrator precluded MVAIC from raising a coverage question and the Arbitrator created coverage where non previously existed.

Courts favor permitting consenting parties to submit their disputes to arbitration and "the law has adopted a policy of noninterference, with few exceptions, in this mode of dispute resolution." (*Sprinzen v. Nomberg,* 46 NY2d 623 [1979]). An award will not be vacated "unless it is violative of a strong public policy, or is totally irrational , or exceeds a specifically enumerated limitation on [an Arbitrator's] power." (*Montanez v. New York City Hous. Auth.*, 52Ad3d 338, 339[1st Dept. 2008](internal citations omitted). Further, the power of the master arbitrator to review factual and procedural issues is limited to "whether the arbitrator acted in a manner that was arbitrary and capricious, irrational or without a plausible basis." (*Petrofsky v. AllstateInsurance Company,* 54 NY2d 207 [1981]). Courts are required to uphold the determinations of the master arbitrator on questions of substantive law if there is a rational basis for the finding. (*Liberty Mutual Insurance Company v. Spine Americare Medical, P.C.,* 294 AD2d 574 [2nd dept. 2002]).

The lower arbitrator's award states, under her "Findings, Conclusions and Basis Therefor," in relevant part:

> The respondent has not issued a denial in this case but asserts that there are outstanding verification requests for the patient to qualify as an eligible injured person pursuant to Article 52 of the Insurance Law. The respondent submitted several alleged verification requests . . . however, several of the verification requests are late or do not contain a proper follow up request[ ] . . . in addition, the respondent submitted

> letters denying the patient's benefits based upon the failure of the patient to qualify for MVAIC benefits. However, these letters are not proper denials or verification requests (see 11 NYCRR Section 65-3.8 and 65-3.5(b) and 3.6(b).
>
> . . .
>
> The respondent's position is not persuasive. The respondent asserted a coverage argument based upon whether the injured person qualifies for MVAIC benefits. The Appellate Court held that in the case of *New York Hospital Medical Center of Queens v. MVAIC*, 12 AD3d 429. . .that MVAIC is subject to the same thirty (30) day pay or deny provision of the no-fault regulation that control all insurance company's doing business in the State of New York. The Court expressly rejected MVAIC's contention that the thirty (30) day time requirement contained in the no-fault statute does not apply to it until after MVAIC had "qualified" an injured party . . . As a result, the respondent's failure to comply with verification protocol does not toll the statutory time period to pay or deny the injured party's claims in this case and the failure of the respondent to issue denial within the thirty (30) days of receipt of the applicant's claims render the claims overdue.
>
> . . .
>
> The respondent's argument that the patient is not covered because he did not provide a response to MVAIC's requests for a Department of Motor Vehicle abstract from a foreign state, a license-revocation of the owner's license or an affidavit of no insurance in order to ascertain if the vehicle carries insurance lacks merit, in this case. As noted above, MVAIC has not established that the alleged verification requests were proper and timely. In addition, a review of the documentation submitted in this case reveals that the patient reasonable responded to the verification requests but that MVAIC kept requesting further additional information . . .

The Master Arbitrator, upon reviewing the award, states, in relevant part:

> The arbitrator concluded that as a result of the MVAIC's failure to pay or deny or properly seek additional verification, it was precluded and that this, coupled with the submission by the applicant of unopposed medical documentation, entitled the applicant to a granting

> of its claim. The MVAIC has argued on this appeal that it should not be precluded because it has raised a coverage defense . . . however . . . it is up to the MVAIC to affirmatively establish this defense where it has failed to issue a denial within 30 days or to properly request additional verification within the same 30 days. In this case, the arbitrator has factually found that the MVAIC did neither. This determination was not an abuse of discretion. The arbitrator very carefully laid out in her decision the basis for the decision. The decision was not arbitrary, capricious, or so irrational as to be incorrect as a matter of law.

MVAIC's argument that the lower Arbitrator's award was contrary to law is without merit. The lower Arbitrator cites to *New York Hospital Medical Center of Queens* in support of her decision. There, the court found that the defendant "neither denied the claim within thirty days after receiving it nor sought to extend that time by requesting verification . . . we reject the defendant's contention that the 30 day time requirement contained in 11 NYCRR 65.15(g)(3) does not apply to it until after it has 'qualified' an injured party . . . to permit defendant to obviate the 30-day time requirement would frustrate the purpose and objective of the No-Fault Law . . ." (*Id.* at 430). Here, the lower Arbitrator notes that MVAIC did not pay the claim or deny it within the statutory thirty days and has failed to toll the thirty time period because "MVAIC has not established that the alleged verification requests were proper and timely." Thus, the lower Arbitrator's award, as confirmed by the master Arbitrator was not arbitrary, capricious, irrational or without plausible basis. (see *Petrofsky*).

Wherefore it is hereby

ORDERED that the petition to vacate the arbitrator's award is denied.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: March 9, 2009

EILEEN A. RAKOWER, J. S.C.