Matter of American Tr. Ins. Co. v Acceptance Indem. Ins. Co.
2009 NY Slip Op 33169(U)
December 10, 2009
Supreme Court, Nassau County
Docket Number: 10713/2009
Judge: F. Dana Winslow

[* 1]

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. F. DANA WINSLOW,

Justice

TRIAL/IAS, PART 6
NASSAU COUNTY

In the matter of the Application of
AMERICAN TRANSIT INSURANCE COMPANY,

Petitioner,

- against -

ACCEPTANCE INDEMNITY INSURANCE CO.,

Respondent.

RETURN DATE: 9/9/09
SEQUENCE NO.: 001

INDEX NO.: 10713/2009

The following papers read on this petition (numbered 1-4)

Notice of Petition to Vacate Arbitration Decision..... 1
Notice of Cross-Motion..... 2
Affirmation in Reply to Respondent's Opposition to Petition and in Opposition to Respondent's Cross Motion for Sanctions.....3
Affirmation in Reply

Petitioner AMERICAN TRANSIT INSURANCE COMPANY ("AMERICAN TRANSIT") brings this petition pursuant to **CPLR §7511** to vacate the arbitration award rendered by Arbitration Forums, Inc. and published on March 9, 2009 (the "Award"). Respondent ACCEPTANCE INDEMNITY INSURANCE CO. ("ACCEPTANCE") opposes the petition and cross-moves for sanctions, costs and attorney's fees pursuant to **22 NYCRR §130-1.1**.

The Award arose out of a mandatory loss-transfer arbitration pursuant to **Insurance Law §5015,** in which AMERICAN TRANSIT sought reimbursement from ACCEPTANCE for medical payments in the sum of $11,558, paid by AMERICAN TRANSIT on behalf of a passenger of an insured automobile used as a vehicle "for hire." *See* **Insurance Law §5015(a).** The passenger was allegedly injured in a motor vehicle accident that occurred on May 21, 2007 between the AMERICAN TRANSIT insured vehicle and a vehicle insured by ACCEPTANCE (the "Accident").

In support of its arbitration application, AMERICAN TRANSIT submitted a copy of the police report for the Accident, and a "PIP ledger" itemizing the payments made.

(The Court notes that the payment ledger attached to the instant petition at Exhibit 1 is not the same ledger attached to the arbitration application, insofar as the report date on the ledger itself indicates that it was generated after the date of the Award.)

ACCEPTANCE filed a response in which it did not dispute that its insured was liable for the Accident or that AMERICAN TRANSIT had paid the amounts listed on its ledger. Rather, it contended that the insured passenger's claim for first-party benefits was fraudulent; i.e., that the alleged injuries for which she sought treatment did not arise out of the Accident. [*See* Petition, Exhibit 2.] ACCEPTANCE submitted damage photos of the Applicant vehicle, the Applicant Driver's Statement, the Police Report, the Applicant Passenger Statement Summary and a copy of ACCEPTANCE's Denial Letter to the attorney for the passenger. The response referred to and paraphrased the results of an investigation made by ACCEPTANCE's Investigative Services Unit, but did not attach an investigative report. ACCEPTANCE maintained, essentially, that the physical evidence and testimony, including the police report, driver's statement, and photos of the vehicle showing minimal damage (which was never repaired), were inconsistent with the "questionable and extensive" treatment received by the passenger.

A panel of three arbitrators decided against AMERICAN TRANSIT and awarded no damages. The Award states: "Applicant (American Transit) proves liability 100% against Respondent (Acceptance). Applicant (Amer. Trans) failed to prove damages and causality. No award. . . . Applicant failed to prove that damages claimed are causality [sic] to this accident." The panel considered the following: "Respondent (Acceptance) submits photos of the Applicant vehicle & Applicant's (Amer Trans) drivers statement along with police report showing no injury & minor impact. Applicant's insured passenger statement contradicts known facts (ie very minor dmg - to vehicle, force of hit, etc...)." [Petition, Exhibit 3.]

AMERICAN TRANSIT now argues that the arbitrators exceeded their power in rendering the Award, insofar as their denial of the claim for reimbursement based solely upon the issue of causality was arbitrary, capricious and irrational. AMERICAN TRANSIT cites the failure of ACCEPTANCE to produce medical or bio-mechanical evidence in support of its defense. In AMERICAN TRANSIT's view, ACCEPTANCE's contention that the injuries could not have resulted from the Accident was supported by nothing more than self-serving speculation and innuendo on the part of ACCEPTANCE's own investigative unit. Accordingly, AMERICAN TRANSIT contends, insofar as the Award lacks the necessary evidentiary support, it should be deemed arbitrary and capricious.

ACCEPTANCE responds, in essence, that the burden of proof on the issue of causation belonged to AMERICAN TRANSIT. ACCEPTANCE maintains that it was incumbent upon AMERICAN TRANSIT, in the first instance, to present proof that the injuries claimed were attributable to the Accident. Insofar as AMERICAN TRANSIT relied solely upon its "PIP ledger" and the copy of the police report as proof of its claim, it did not meet this burden. The fact that an accident occurred and that payments were made for medical treatment do not establish that the medical treatment was causally related to the accident. Accordingly, ACCEPTANCE argues, even if ACCEPTANCE had submitted no response to the arbitration claim, the arbitrators' determination that there was no evidence of causality would not be irrational.

"Courts are reluctant to disturb the decisions of arbitrators lest the value of this method of resolving controversies be undermined." **Matter of Goldfinger v. Lisker,** 68 NY2d 225. In the context of a compulsory arbitration pursuant to **CPLR §5105**, an arbitrator's determination is subject to closer judicial scrutiny than in the context of a voluntary arbitration. **Matter of MVAIC v. Aetna Cas. & Sur. Co.**, 89 NY2d 214, 223. The scope of review is limited, however, to the question of whether or not the award was arbitrary and capricious, irrational or without a plausible basis. **Id.; Matter of Petrofsky v. Allstate Ins. Co.**, 54 NY2d 207, 211; **Matter of State Farm Mut. Automobile Ins. Co. v. Lumbermens Mut. Cas. Co.**, 18 AD3d 762; **Matter of Hanover Ins. Co. v. State Farm Mut. Automobile Ins. Co.,** 226 AD2d 533; **Nationwide Ins. Co. v. Markuson,** 113 AD2d 1014; **Matter of General Accident Fire and Life Assurance Corp., Ltd. v. Avery,** 88 AD2d 739.

To be upheld, an award must have evidentiary support or other rational basis. **Id.** Nonetheless, "arbitration, by its nature contemplates a less formal environment than the judicial forum." **Matter of Goldfinger**, 68 NY2d at 230-231. The arbitrators are not bound by the rules of evidence, and the reviewing Court does not concern itself with the form or sufficiency of the evidence considered by the arbitrators. **Matter of Silverman (Benmor Coats),** 61 NY2d 299, 308; **Matter of Erin Construction and Development Co., Inc. v. Meltzer,** 58 AD3d 729; **Matter of Mays-Carr v. State Farm Ins. Co.,** 43 AD3d 1439; **Matter of Travelers Ins. Co. v. Job**, 239 Ad2d 289 (citations omitted).

In the case at bar, each party claims that the other failed to produce sufficient evidence in support of its claim or defense, as the case may be. If this were plenary action, resolution would turn on which party bore the burden of proof. In reviewing an arbitration award, however, the Court considers burden of proof only as it relates to the question of whether or not the arbitrators' determination was so contrary to settled law as to be deemed irrational. *See* **Matter of State Farm (Lumbermens)**, 18 AD3d at 763.

The arbitrators, in effect, placed the burden of proof upon AMERICAN TRANSIT. AMERICAN TRANSIT's argument herein rests upon the unstated proposition that, regardless of the ultimate burden of proof, AMERICAN TRANSIT had no initial burden to produce evidence of causality; i.e., that upon submitting its medical bills and payment, a causal relationship between the medical treatment and the subject accident could be presumed. AMERICAN TRANSIT's burden of proof would be triggered only if ACCEPTANCE came forward with sufficient evidence to demonstrate the absence of such causal relationship.

AMERICAN TRANSIT has cited, and this Court has found, no authority for this proposition. To the contrary, at least one appellate decision has held that the applicant seeking reimbursement in a loss-transfer arbitration pursuant to **CPLR §5015** bears the burden to establish *prima facie* entitlement to recover the benefits paid. *See* **Matter of Progressive Northeastern Ins. Co. v. New York State Ins. Fund**, 56 AD3d 1111, 1112 (award in favor of applicant was vacated based upon applicant's failure to produce evidence that the subject vehicle was used "principally ... for hire"). This is consistent with the view that the applicant, AMERICAN TRANSIT in this case, had the initial burden to produce evidence in support of *every* element of its claim, including causality.

The Court shall not belabor discussion of burdens of proof, in view of its understanding that arbitrators are not required to apply a formal analysis of shifting burdens of proof as in a motion for summary judgment. *See* **Matter of Guarino v. Allstate Ins. Co.,** 7 Misc.3d 1016, citing **Mount St. Mary's Hosp. v. Catherwood,** 26 NY2d 493. Suffice it to say that the arbitrator's determination does not contradict, but rather comports with applicable law on the matter.

The ultimate determination rests upon whether or not the Award, viewed as a whole, is arbitrary and capricious, or without plausible basis. The Court finds that it is not. Arbitration provides the sole remedy in loss transfer between insurers, and, accordingly, is the proper forum for resolving all questions of law and fact that arise in connection with this remedy, including the question of causation. **Paxton Nat. Ins. Co. v. Merchants Mut. Ins. Co.,** 74 AD2d 715. The arbitrators could rationally find that AMERICAN TRANSIT had failed to demonstrate a causal relationship between the medical treatments for which it paid and the Accident. An evidentiary basis for such finding existed in the record before the arbitrators. The Court cannot concern itself with the form or sufficiency of this evidence. **Matter of Silverman (Benmor Coats),** 61 NY2d at 308. Viewed in its totality, the evidence supports the arbitrators' conclusion.

The Court has considered the remaining arguments of the parties and finds them to be without merit. Accordingly, it is

ORDERED, that the application of AMERICAN TRANSIT to vacate the Award is **denied.**

ORDERED, that the cross-motion of ACCEPTANCE is **granted in part** to the extent that it seeks confirmation of the Award, and the Award is hereby **confirmed. CPLR §7510; CPLR §7511(e).** The cross-motion is **denied in part** to the extent that it seeks to impose sanctions, costs and attorneys fees pursuant to **22 NYCRR §130-1.1.**

Dated: 12/15/2009

J.S.C.

ENTERED
DEC 28 2009
NASSAU COUNTY
COUNTY CLERK'S OFFICE