

Matter of Hartford v City of New York

2010 NY Slip Op 32143(U)

August 10, 2010

Supreme Court, New York County

Docket Number: 104116/10

Judge: Eileen A. Rakower

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

PRESENT: HON. EILEEN A. RAKOWER

PART 15

Justice

Index Number : 104116/2010
HARTFORD
 VS.
CITY OF NEW YORK
 SEQUENCE NUMBER : 001
 VACATE OR MODIFY AWARD

INDEX NO. 104116/10
 MOTION DATE _____
 MOTION SEQ. NO. _____
 MOTION CAL. NO. _____

on this motion to/for _____

PAPERS NUMBERED

1
2
3

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

MOTION IS DECIDED IN ACCORDANCE WITH THE ACCOMPANYING MEMORANDUM DECISION.

FILED
 AUG 13 2010
 NEW YORK
 COUNTY CLERK'S OFFICE

Dated: 8/10/10



HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

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

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X
IN THE MATTER OF THE APPLICATION
THE HARTFORD

Seq.: 001

Petitioners,
- against -

Index No.
104116/10

CITY OF NEW YORK

Respondent.

DECISION
and ORDER

FILED
AUG 13 2010
NEW YORK
COUNTY CLERK'S OFFICE X

-----X
HON. EILEEN A. RAKOWER, J.S.C.

Petitioner files this petition seeking an order from the court vacating the award of Arbitrator Jeffrey H. Billington, which was issued on January 5, 2010. Respondent the City of New York ("City") opposes.

The instant action arises out of a motor vehicle accident which occurred on May 5, 2008 at the intersection of Ditmas Avenue and East 94th Street in County of Kings, State of New York. The driver of the vehicle¹, David Saint Dic, was traveling eastbound on Ditmas Avenue, when he was struck from behind by a City owned garbage truck. The impact from the truck caused Mr. Dic to rear end the vehicle in front of him.

Petitioner sought reimbursement for payments made on behalf of Mr. Dic, by filing a New York Personal Injury Protection form("PIP"). The arbitration proceedings for PIP are administered by Arbitration Forums, Inc., a "No-Fault Intercompany Arbitration Program for the New York State Insurance Program." The two general categories of disputes that are resolved in the program are "Loss Transfer" and "Priority of Payment." According to Arbitration Forum's website:

"Loss Transfer cases are filed to recover No-Fault Payments made to an

¹ Therese M. Esperance is the owner of the vehicle, and is insured by petitioner.

injured party as a result of an accident or occurrence involving a vehicle that weighs over 6,500 lbs., is unladen, or, is a vehicle-for-hire used principally for the transportation of persons or property (including livery). Loss transfer liability is based on the New York Pure Comparative Negligence Law.”

Petitioner submitted a ledger with a list of payments made on Mr. Dic’s behalf, totaling \$19,846.53, as well as other requested material and forms. City submitted objections to petitioner’s claim on its “Contentions Sheet,” which included the following:

\$\$\$19,846.53 PYMT LEDGER DOES NOT INDICATE IF EXPENSES WERE INCLUDED OR EXCLUDED, SEE AF RULES PG 9 & 2/9 REVISION? PYMNTS PD ACC TO FEE SCHEDULE? ACUP PD ACC TO FEE SCHEDULE? BILLED? PD? NON-RECOVERABLE EXPENSES NOT INCLUDED IN TOTAL? MEDICALLY NECESSARY? CAUSALLY RELATED TO ACCIDENT? W/L CALCULATION PROVIDED? NOT PAID IN EXCESS OF \$2,000.00 PER MONTH? NON RECOVERABLE EXPENSES INCLUDED? INT? IME? ATTY FEE? PYMNTS TO CAROTHERS-FRAUD? NON RECOVERABLE SURCHARGE?

Sometime thereafter, a hearing was held, at which time an adjournment was granted because the arbitrator requested clarification of the payment ledger. Another hearing was held on January 5, 2010. At that hearing, the arbitrator, under the heading “What did the Applicant prove or fail to prove?,” found that:

The case was previously adjourned allowing the Applicant time to submit a clear payment Ledger indicating how much was paid in Medical, interest and expenses. This information was not provided in the second hearing, After reviewing the ledger that was first submitted it is difficult to properly evaluate it.

Under the heading “What evidence caused you to render this decision and why?,” the arbitrator found that:

The Respondent indicates an explanation of the payments were [sic] sent to Arbitration, but it appears to be the same payment ledger which is unclear and no new information was sent to Respondent #1 which was the conditions [sic] of the adjournment. I believe the Applicant had enough time to present a clear explanation of benefits to the Respondent.

When an arbitration clause is entered into voluntarily, 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]). Further, if the arbitration is voluntary, 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). However, where arbitration is compulsory, courts “impose closer judicial scrutiny of the arbitrator's determination under CPLR 7511(b) . . . [t]o be upheld, an award in a compulsory arbitration proceeding must have evidentiary support and cannot be arbitrary and capricious.” (*Motor Vehicle Acc. Indemnification Corp. v. Aetna Cas. & Sur. Co.*, 89 NY2d 214[1996]).

Here, the arbitration proceeding at issue was compulsory pursuant to Insurance Law §5105, which states, in relevant part:

(a) Any insurer liable for the payment of first party benefits to or on behalf of a covered person and any compensation provider paying benefits in lieu of first party benefits which another insurer would otherwise be obligated to pay . . . has the right to recover the amount paid from the insurer of any other covered person to the extent that such other covered person would have been liable, but for the provisions of this article, to pay damages in an action at law. In any case, the right to recover exists only if at least one of the motor vehicles involved is a motor vehicle weighing more than six thousand five hundred pounds.

(b) The sole remedy of any insurer or compensation provider to recover on a claim arising pursuant to subsection (a) hereof, shall be the submission of the controversy to mandatory arbitration pursuant to procedures promulgated or approved by the superintendent.

[* 5] .

The rules of the Arbitration Forums, Inc., regarding "proof of damages," states:

Proof of damages shall include a computer printout or a ledger of benefits paid, kept in the regular course of business. The ledger must include the name of the payee, amount paid, date of service, date paid, and the total amount paid.

After review of the ledger submitted by petitioner, it appears that each entry contains the name of the payee, amount paid, date(s) of service, date paid and the total amount paid for each medical payout. The arbitrator fails to specify which, if any, of the entries requires clarification. The arbitrator also states that he is denying the claim because petitioner failed to submit a clear ledger showing how much was paid in "interest and expenses." Although petitioner includes three physical examinations in its ledger and lists its "Total Expense Paid" as \$2340.95, it is clear from the entirety of the paperwork that petitioner never requests reimbursement for its expenses. As the record does not contain evidentiary support for the arbitrator's decision, it must be vacated and remanded.

Wherefore it is hereby

ORDERED that the petition to vacate the arbitrator's award issued on January 5, 2010 is granted; and it is further

ORDERED that the matter is remanded for arbitration before a different arbitrator.

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

Dated: August 10, 2010


EILEEN A. RAKOWER, J.S.C.

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