

Nationwide Mut. Ins. Co. v Acevedo-De La Cruz

2013 NY Slip Op 31452(U)

June 28, 2013

Supreme Court, New York County

Docket Number: 651462/13

Judge: Cynthia S. Kern

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

CYNTHIA S. KERN
J.S.C.

PRESENT: _____
Justice

PART _____

Index Number : 651462/2013
IN THE MATTER OF THE
vs.
ACEVEDO-DE LA CRUZ, CAROLINE
SEQUENCE NUMBER : 001
VACATE OR MODIFY AWARD

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

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

Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). _____
Answering Affidavits — Exhibits _____ No(s). _____
Replying Affidavits _____ No(s). _____

Upon the foregoing papers, it is ordered that this motion is

is decided in accordance with the annexed decision.

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

Dated: 6/28/13

_____, J.S.C.

- 1. CHECK ONE: ... CASE DISPOSED
2. CHECK AS APPROPRIATE: ... MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: ... SETTLE ORDER SUBMIT ORDER DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

CYNTHIA S. KERN

NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X

In the Matter of the Application of

NATIONWIDE MUTUAL INSURANCE COMPANY,

Petitioner,

Index No. 651462/13

-against-

DECISION/ORDER

CAROLINE ACEVEDO-DE LA CRUZ,

Respondent.

-----X

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for : _____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affirmation in Opposition	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Petitioner Nationwide Mutual Insurance Company commenced the instant proceeding seeking an Order pursuant to CPLR § 7511(a) vacating the master arbitration award and confirming the original arbitration award. For the reasons set forth below, the petition is denied and the master arbitration award is hereby confirmed.

The relevant facts are as follows. On or about December 29, 2011, respondent Caroline Acevedo-De La Cruz (“respondent”) was involved in a motor vehicle accident on the Southern State Parkway in Nassau County between Exits 22N and 23N. On or about January 5, 2012, respondent notified petitioner of the accident by telephone. In response, petitioner sent respondent a letter, dated January 5, 2012, acknowledging the occurrence of the accident and

providing respondent with a medical records authorization form to further process her claim. On February 15, 2012, respondent submitted notice of the accident to petitioner by way of an NF-2 application for no-fault benefits. However, prior to respondent providing notice, on or about February 10, 2012, petitioner issued a denial of no-fault benefits on the ground that a proper notice of claim was not timely received, in violation of 11 NYCRR 65.1-1. 11 NYCRR 65.1-1 provides, in pertinent part,

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with the terms of this coverage.

Notice. In the event of an accident, written notice setting forth details sufficient to identify the eligible injured person, along with reasonably obtainable information regarding the time, place and circumstances of the accident, shall be given by, or on behalf of, each eligible injured person, to the Company, or any of the Company's authorized agents, as soon as reasonably practicable, but in no event more than 30 days after the date of the accident, unless the eligible injured person submits written proof providing clear and reasonable justification for the failure to comply with such time limitation.

In its denial letter, petitioner also informed respondent that she had the opportunity to provide "written proof providing clear and reasonable justification for the failure to comply with such time limitation." However, petitioner alleges that respondent failed to do so and has not done so to date.

Respondent then requested no-fault arbitration for a ruling on petitioner's denial of no-fault benefits. In his award dated October 12, 2012, Arbitrator Joseph J. O'Brien ("Arbitrator O'Brien") found that petitioner "timely denied benefits contending that a proper notice of claim was not timely received by respondent in violation of the 30-day rule." Arbitrator O'Brien noted that petitioner's January 5, 2012 letter, acknowledging the occurrence of the motor vehicle

accident, was sent to respondent's correct address, that respondent failed to provide written notice of the accident to petitioner within 30 days after the accident and that petitioner's denial sufficiently "apprised [respondent] of an opportunity to provide 'written proof providing clear and reasonable justification for the failure to comply with such time limitation,' but, on the evidence, [respondent] did not do this." Thus, Arbitrator O'Brien found that petitioner proved its prima facie case for denying benefits, that respondent's evidence "fails to prove a clear and reasonable justification for failure to comply with the 30-day rule" and thus, respondent was not entitled to no-fault benefits.

Respondent then appealed Arbitrator O'Brien's award to the Master Arbitrator, asserting that her initial notification of the accident to petitioner was phoned in on January 5, 2012 and entered into petitioner's computer system and that petitioner's acknowledgment to respondent using a form required to "process your no-fault medical claim" said nothing about the lack of written notice. In his award, dated February 25, 2013, Master Arbitrator Frank G. Godson ("Master Arbitrator Godson") vacated Arbitrator O'Brien's award pursuant to the no-fault regulations noting that 11 NYCRR 65-3.2(b), (d) and (e) requires that a carrier

- (b) Assist the applicant in the processing of a claim to not treat the applicant as an adversary;
- (d) Hasten the processing of a claim through the use of a telephone whenever possible to do so;
- (e) Clearly inform the applicant of the insurer's position regarding any disputed matter.

Based on the evidence, Master Arbitrator Godson found that "[i]t is clear that [petitioner] violated the spirit, if not the letter, of these instructions. It is not clear from the documentation...whether [respondent] received [petitioner's] communications of 1-5-12, but as a

lay person she cannot be faulted for relying on her telephone notice...as fulfilling any duty she had to give notice, even if she had received those communications.” Petitioner now moves to vacate Master Arbitrator Godson’s award on the ground that he exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made.

A party aggrieved by an arbitration award may move to vacate the award pursuant to Article 75 of the CPLR. Specifically, CPLR § 7511(a) states that “[a]n application to vacate or modify an award may be made by a party within ninety days after is [sic] delivery to him.” Compulsory arbitration awards are subject to a broader scope of review than awards resulting from consensual arbitration and the standard of review to be applied to such awards is whether the award is supported by evidence or other basis in reason as appears in the record or may be appropriate. *See Rose v. Travelers Ins. Co.*, 96 A.D.2d 551 (2d Dept 1983); *see also DiNapoli v. Peak Automotive, Inc.*, 34 A.D.3d 674 (2d Dept 2006)(“Vacatur of an arbitration award is strictly limited to the reasons stated in CPLR § 7511(b), but where the parties have submitted to compulsory arbitration, the award must have evidentiary support and cannot be arbitrary or capricious if it is to be upheld.”) “The arbitrary or capricious test chiefly ‘relates to whether a particular action should have been taken or is justified ... and whether the...action is without foundation in fact.’ Arbitrary action is without sound basis in reason and is generally taken without regard to facts.” *Pell v Board. of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 N.Y.2d, 222, 231 (1974).

In the instant action, the petition to vacate the master arbitration award is denied as there was a rational basis for the award. Petitioner’s sole argument in support of its petition is that

Master Arbitrator Godson's award vacating Arbitrator O'Brien's award was arbitrary and capricious because respondent did not comply with the written notice requirement in the no-fault regulations. However, Master Arbitrator Godson rationally found that respondent's failure to provide written notice to petitioner within 30 days after the accident did not violate the no-fault regulations as he found that respondent's initial notification of the accident, which was phoned into petitioner on January 5, 2012, was sufficient for notice. Pursuant to 11 NYCRR 65-3.4,

Acknowledgment of claim. (a) Whenever the insurer receives notice of claim by telephone, the party receiving such notice on behalf of the insurer shall be identified to the caller by name and title and shall request the name, address and telephone number of the applicant and the name of the policyholder or the policy number or both, if available, along with reasonably obtainable information regarding the time, place and circumstances of the accident which will enable the insurer to begin processing the claim.

Additionally, Master Arbitrator Godson's determination that petitioner violated the no-fault regulations by treating respondent as an adversary and by failing to inform respondent of its position regarding her claim was also rational. After acknowledging receipt of the telephone notice from respondent, petitioner failed to notify respondent that such notice was insufficient and that more was required of her pursuant to the no-fault regulations. Moreover, petitioner's own correspondence to respondent states "[t]his will acknowledge receipt of notice that you may have sustained injuries..." Based on the foregoing, this court finds that Master Arbitrator Godson's award had a rational basis and thus, should not be vacated. Pursuant to CPLR § 7511(e), the master arbitration award is hereby confirmed.

Accordingly, the petition to vacate the master arbitration award is denied and the award is confirmed. It is hereby

