

Matter of Hereford Ins. Co. v American Ind. Ins.

2014 NY Slip Op 31358(U)

April 23, 2014

Sup Ct, New York County

Docket Number: 654224/13

Judge: Cynthia S. Kern

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

In the Matter of the Application of **CYNTHIA S. KERN**
J.S.C.

HEREFORD INSURANCE COMPANY a/s/o ASIM
BORDAN,

Petitioner,

Index No. 654224/13

-against-

DECISION/ORDER

AMERICAN INDEPENDENT INSURANCE,

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 Hereford Insurance Company a/s/o Asim Bordan (hereinafter referred to as “petitioner” or “Hereford”) commenced the instant proceeding seeking an Order pursuant to CPLR § 7510 confirming an arbitration award entered in favor of petitioner and against respondent American Independent Insurance (“American”) and directing judgment be entered thereon pursuant to CPLR § 7514, together with costs and disbursements, including interest from the date of the arbitration award. For the reasons set forth more fully below, the petition is granted.

The relevant facts are as follows. Mr. Bordan was an employee of Perdu Taxi, Inc. (“Perdu”) and operated a motor vehicle for hire registered to Perdu and insured by petitioner. On September 19, 2010, Mr. Bordan was involved in a motor vehicle accident with a 2004 BMW

(the “BMW”) registered to Jessica Pilutti, a resident of New Jersey, bearing New Jersey license plate V99ACL (the “accident”) and insured by American. Specifically, the motor vehicle accident occurred when the vehicle operated by Mr. Bordan was struck by the BMW after the BMW ran a red light. In the police report, American’s insured was cited for contributing factors #17 (“Traffic Control Disregarded”) and #4 (“Driver Inattention/Distraction”).

Petitioner paid a total of \$13,597.46 in Workers’ Compensation Benefits in lieu of Mandatory Personal Injury Protection (“No-Fault”) benefits to and on behalf of Mr. Bordan for the injuries he sustained in the accident. Petitioner alleges that on or about June 5, 2012, it confirmed that American provided coverage for the BMW and that American had assigned the accident claims number 201079453. Thus, petitioner served American with an Inter-Company Reimbursement Notification demanding reimbursement for its Workers’ Compensation payments made as a result of the negligence of American’s insured. Petitioner made such demand pursuant to New York Insurance Law (“Ins. Law”) § 5105 which permits petitioner, as the provider of Workers’ Compensation benefits in lieu of No-Fault benefits, to seek reimbursement for “first party benefits” from the insurer of the party responsible for the accident on the ground that one of the vehicles involved in the accident was a vehicle for hire. Pursuant to Ins. Law § 5105, the venue for seeking reimbursement is mandatory arbitration. Pursuant to 11 NYCRR § 65-4.11, Arbitration Forums, Inc. is the administrator of mandatory arbitrations under Ins. Law § 5105 in New York.

On or about October 24, 2012, petitioner brought an application for an arbitration proceeding against American for the reimbursement of “first party benefits” paid by petitioner to Mr. Bordan in connection with the accident. American failed to answer petitioner’s application. On or about December 11, 2012, Arbitrator Diana Brown heard the case in New York and on or

about December 12, 2012, she issued a decision finding American's insured 100% liable for the accident based on the police report and American's insured's admission that she was unable to see the traffic light and awarded petitioner \$13,597.46 against American (the "award"). As petitioner has yet to receive payment pursuant to the award, it commenced the instant proceeding seeking an Order confirming the award and directing judgment be entered thereon.

Pursuant to CPLR § 7510, "[t]he court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 7511." 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). "[W]here 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." *DiNapoli v. Peak Automotive, Inc.*, 34 A.D.3d 674 (2d Dept 2006).

In the instant action, the petition to confirm the arbitration award at issue herein is granted as the award was not arbitrary or capricious. Arbitrator Brown issued the award based on the police report, which stated that American's insured was 100% liable for the accident and American's insured's admission that she was unable to see the traffic light prior to the accident. Respondent does not oppose the petition on the ground that the award is irrational but rather on the ground that this court lacks personal jurisdiction over American pursuant to CPLR §§ 301 & 302. However, such assertion is without merit. In a proceeding brought to confirm an arbitration award pursuant to CPLR § 7510, personal jurisdiction over the respondent may be acquired if personal service on the individual respondent is made in New York pursuant to CPLR § 301 or

CPLR § 302. See McKinney's Consol. Laws of New York, Practice Commentaries, CPLR § 7502. However, "[a]side from the statutory bases of jurisdiction, an agreement to participate in arbitration in New York should be deemed an implied consent to the jurisdiction of the New York courts to enforce and regulate the arbitration." *Id.*; see also *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Lecopulos*, 553 F.2d 842, 844 (2d Cir. 1977)(holding that by consenting to arbitration in New York, respondent "must be deemed to have consented to the jurisdiction of the court....") Although American did not appear at the arbitration, it has never asserted that the arbitrator in New York did not have jurisdiction over it. It failed to seek a stay of the arbitration on the ground that the arbitrator lacked jurisdiction and it has failed to move this court to vacate the award on that basis. Thus, as the arbitration was held in New York and the arbitrator's jurisdiction over respondent was never contested by respondent, this court finds that it has personal jurisdiction over respondent for purposes of an application to confirm an arbitration award made at an arbitration held in New York. Accordingly, it is hereby

ORDERED and ADJUDGED that the petition seeking an Order confirming the arbitration award and directing judgment be entered thereon is granted. Settle order and judgment.

Dated: 4/23/14

Enter: _____

CK
J.S.C.

CYNTHIA S. KERN
J.S.C.