

Tri State Consumer Ins. Co. v High Point Prop. & Cas. Co.

2014 NY Slip Op 33786(U)

June 16, 2014

Supreme Court, Nassau County

Docket Number: 602814/13

Judge: Antonio I. Brandveen

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

TRI STATE CONSUMER INSURANCE
COMPANY a/s/o DONALD ROHAN,

TRIAL / IAS PART 31
NASSAU COUNTY

Plaintiff,

Index No. 602814/13

- against -

Motion Sequence No. 001, 002

HIGH POINT PROPERTY & CASUALTY CO.,

Defendant.

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits	<u>1, 2</u>
Answering Affidavits	_____
Replying Affidavits	<u>3</u>
Briefs: Plaintiff's / Petitioner's	_____
Defendant's / Respondent's	_____

The petitioner insurance company seeks (motion sequence # 001) pursuant to CPLR 7510 confirmation and judgment for an arbitration award rendered April 2, 2013. The respondent insurance company cross moves (motion sequence # 002) for an order pursuant to CPLR 7511 vacating that arbitration award, and directing judgment in favor of the respondent on the ground of lack of insurance coverage.

The arbitration award results from a loss transfer arbitration decision rendered by Arbitration Forums, Inc. pursuant to the Insurance Law Article 51, which mandating no-fault subrogation claims on loss transfers must be submitted there under Insurance

Law § 5105. It is undisputed that a lost transfer arbitration proceeding was held with the participation of the petitioner and the respondent for reimbursement of no-fault benefits paid by the petitioner to the petitioner's subrogor, Donald Rohan, resulting from a January 25, 2010 accident. The claim was for \$36,198.98, and decisions are required to be paid within 30 days.

The petitioner asserts it forwarded copies of the decision to the respondent on May 9, 2013, July 22, 2013, August 14, 2013, August 20, 2013, September 16, 2013 and September 24, 2013, and made several calls to the respondent's representatives.

Arbitration Forums, Inc. received a dispute of the findings from the respondent on August 12, 2013. Arbitration Forums, Inc. subsequently closed its review of the arbitration findings because the respondent's request was denied, and the arbitration award was affirmed. The petitioner avers there has been no payment of that arbitration award, and it now seeks confirmation and judgment for that arbitration award with statutory interest and continuing legal costs associated with this instant proceeding.

In opposition, the respondent asserts the arbitration award was arbitrary, capricious, irrational and incorrect as a matter of law, or based upon insufficient evidence and excessive power and a failure to make a final and definite award and a procedural error was not waived. The respondent claims Arbitration Forms, Inc. did not have jurisdiction over the matter where the respondent raised the affirmative defense of no insurance coverage. The respondent contends there was no provision for insurance to the

vehicle involved in the accident.

CPLR 7511 provides:

An application to vacate or modify an award may be made by a party within ninety days after its delivery to him...The award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that party were prejudiced by: (i) corruption, fraud or misconduct in procuring the award; or (ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; or (iii) an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or (iv) failure to follow the procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection.

This Court determines the respondent participated in the arbitration, and was served with a notice of intention to arbitration. The Court also determines the petitioner satisfies its CPLR 7510 burden by showing entitlement to confirmation and judgment of the April 2, 2013 arbitration award. In opposition, the respondent fails to satisfy its CPLR 7511 burden by showing prejudice by corruption, fraud or misconduct in procuring the April 2, 2013 arbitration award (*see Science Dev. Corp.*, 156 AD2d 253). In opposition, the court finds the respondent fails to show that its rights were prejudiced by: corruption, fraud or misconduct in procuring the award; or by partiality of an arbitrator appointed as a neutral; or by an arbitrator, or agency or the person making the award exceeded power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or by a failure to follow the statutorily required procedure (*see Bert Building Materials Corporation V. Local 1205*, 18 NY2d 566). The Court also finds the

respondent continued with the arbitration with notice of the defect and without objection.

Now, on the petition and cross motion, it is

ORDERED, ADJUDGED AND DECREED, the petition to confirm the arbitration award is granted, and it is also,

ORDERED, ADJUDGED AND DECREED, respondent's cross motion to vacate the award, and to deny the petition is hereby denied; and it is further

ORDERED, ADJUDGED AND DECREED, that the petitioner, does recover of the respondent, the sum of \$36,198.98 with interest from the date of the award, together with costs and disbursements as taxed, and the petitioner have execution therefor.

So ordered.

Dated: **June 16, 2014**

ENTER:



J. S. C.

FINAL DISPOSITION

ENTERED

JUN 18 2014

NASSAU COUNTY
COUNTY CLERK'S OFFICE