| **Matter of Amtrust Fin. Servs., Inc. v Countrywide Ins. Co.** |
| --- |
| 2015 NY Slip Op 30915(U) |
| June 2, 2015 |
| Supreme Court, New York County |
| Docket Number: 650478/2015 |
| Judge: Carol R. Edmead |
|  |
|  |

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

x

In the Matter of the Arbitration of Certain Controversies Between AMTRUST FINANCIAL SERVICES, INC. a/k/a THE AMTRUST GROUP,

Index No. 650478/2015

Petitioner,

**DECISION/ORDER**

-against-

COUNTRYWIDE INSURANCE CO.

Respondent.

x

EDMEAD, J.S.C.

**MEMORANDUM DECISION**

Petitioner Amtrust Financial Services, Inc., a/k/a The Amtrust Group (Petitioner) moves for an order, pursuant to CPLR 7511, vacating and setting aside the Arbitration Award dated December 16, 2014, determining that petitioner is entitled to an award of damages under Article 51 of the Insurance Law in the amount of $14,781.43 or in the alternative remanding the matter back to Arbitration Forums for a new determination. Respondent Countrywide Insurance Co. (Respondent) cross moves for an order, confirming the arbitration award dated December 16, 2014 as the award was neither arbitrary nor capricious and directing that judgment be entered thereon; and for an order denying petitioner's Petition to Vacate on the ground\s that the award was neither arbitrary nor capricious.

As clearly articulated by petitioner, notwithstanding the fact that the Arb Forums online filing system confirmed that petitioner's medical bills and payment history had been successfully uploaded, on December 16, 2014, the arbitrator rendered a decision denying petitioner's claim on the ground that petitioner failed to provide the payment ledgers holding in the section designated

as "Final Decision Information at pages 1-2 of Exhibit A": Review of the damages completed and the needed ledger with totals was not given.

In opposition, respondent's argument that petitioner failed to provide "proper" payment ledger is unpersuasive. The arbitrator did not base his denial on the "propriety" of the requisite ledger but on the "absence" of said ledger.

Likewise, respondent's Statute of Limitations argument is misplaced. Although the date of the accident was July 8, 2010, there have been continuing determinations and claims related thereto. And the current claim is to recover payments made from April 22, 2013 through September 4, 2014.

*Discussion*

It has long been settled that New York State public policy favors the enforcement of arbitration agreements (*Matter of Weinrott [Carp]* 32 N.Y.2d 190, 199, 344 N.Y.S.2d 848, 298 N.E.2d 42 [1973]; *Matter of Smith Barney Shearson Inc. v Sacharow,* 91 N.Y.2d 39, 49, 666 N.Y.S.2d 990, 689 N.E.2d 884 [1997]), for arbitration serves "as a means of conserving the time and resources of the courts and the contracting parties" (*Matter of Nationwide Gen. Ins. Co. v Investors Ins. Co. of Am.,* 37 N.Y.2d 91, 95, 371 N.Y.S.2d 463, 332 N.E.2d 333 [1975], *see also Maross Constr., Inc. v Central N.Y. Regional Transp. Auth.,* 66 N.Y.2d 341, 345, 497 N.Y.S.2d 321, 488 N.E.2d 67 [1985] [arbitration "is now well recognized as an effective and expeditious means of resolving disputes between willing parties desirous of avoiding the expense and delay frequently attendant to the judicial process"]; *Matter of Siegel [Lewis],* 40 N.Y.2d 687, 689, 389 N.Y.S.2d 800, 358 N.E.2d 484 [1976] ["[i]t has long been the policy of the law to interfere as little as possible with the freedom of consenting parties to achieve that objective"]).

Judicial review of an arbitration award is limited, and 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 [the arbitrator's] power" (*Matter of Silverman [Benmor Coats],* 61 N.Y.2d 299, 308, 473 N.Y.S.2d 774, 461 N.E.2d 1261 [1984]; *see also Matter of United Fedn. of Teachers, Local 2, AFT, AFL-CIO v Board of Educ. of City School Dist. of City of N.Y.,* 1 N.Y.3d 72, 83, 769 N.Y.S.2d 451, 801 N.E.2d 827 [2003]). Moreover, courts are obligated to give deference to the decision of the arbitrator (*see Matter of Sprinzen [Nomberg],* 46 N.Y.2d 623, 629, 415 N.Y.S.2d 974, 389 N.E.2d 456 [1979] ["An arbitrator's paramount responsibility is to reach an equitable result, and the courts will not assume the role of overseers to mold the award to conform to their sense of justice"]). This is true even if the arbitrator misapplied the substantive law in the area of the contract (*see Matter of Associated Teachers of Huntington v Board of Educ., Union Free School Dist. No. 3, Town of Huntington,* 33 N.Y.2d 229, 235, 351 N.Y.S.2d 670, 306 N.E.2d 791 [1973]; *see also Rochester City School Dist. v Rochester Teachers Assn.,* 41 N.Y.2d 578, 581, 394 N.Y.S.2d 179, 362 N.E.2d 977 [1977]).

So, even where the arbitrator makes a mistake of fact or law, or disregards the plain words of the parties' agreement, the award is not subject to vacatur "unless the court concludes that it is totally irrational or violative of a strong public policy" and thus in excess of the arbitrator's powers (*Hackett v Milbank, Tweed, Hadley & McCloy,* 86 N.Y.2d 146, 155, 630 N.Y.S.2d 274, 654 N.E.2d 95 [1995]). *See also Maross Constr. v Central N.Y. Regional Transp. Auth.,* 66 N.Y.2d 341, 346, 497 N.Y.S.2d 321, 488 N.E.2d 67 [1985]; *Matter of Silverman [Benmor Coats],* 61 N.Y.2d 299, 308, 473 N.Y.S.2d 774, 461 N.E.2d 1261 [1984]; *Matter of Sprinzen [Nomberg],* 46 N.Y.2d 623, 631, 415 N.Y.S.2d 974, 389 N.E.2d 456 [1979]; *Garrity v Lyle Stuart, Inc.,* 40 N.Y.2d 354, 357, 386 N.Y.S.2d 831, 353 N.E.2d 793 [1976]).

While the term "irrationality" is oft bandied about in arbitration decisions and finds its

way, almost inexorably, as the last of the losing litigator's long litany of laments in actions to vacate an arbitration award, there is precious little precedent to delineate in this context what "irrational" means.

The New York Court of Appeals recognizes "irrationality" as a non-statutory ground for setting aside an arbitral award under New York law. As recently as November 20, 2003, the Court of Appeals reiterated this principal in *United Federation of Teachers v Board of Education,* 1 N.Y.3d 72, 79, 769 N.Y.S.2d 451, 801 N.E.2d 827 [2003]). In that case, the Court considered public policy grounds for the vacation of an arbitration award, and found such grounds not present in the case. In the course of its decision, however, the Court in listing the grounds for vacation of a New York arbitration award, again included "irrationality."

An arbitrator's determination is "irrational" if it gives a completely baseless construction to the provisions of the parties' contract in dispute and, in effect, makes a new contract or misconstrues the contract agreed to by the parties (*see Matter of Pine Plains Cent. School Dist. v Kimball,* 272 A.D.2d 332, 333, 708 N.Y.S.2d 306 [2000], quoting *Matter of National Cash Register Co. [Wilson],* 8 N.Y.2d 377, 383, 208 N.Y.S.2d 951, 171 N.E.2d 302 [1960]).

In the instant case, it is clear that the arbitrator's determination failed to consider or acknowledge documentary evidence submitted and confirmed received through the Arb Forums' own website. Based on the foregoing, it is hereby

**ORDERED** that the motion of Petitioner The Amtrust Group is granted to the extent that the award dated December 16, 2014 is hereby vacated and the matter is remanded back to Arbitration Forums for a new determination. And it is further

**ORDERED** that the cross motion of Respondent Countrywide Insurance Co. Is denied in its entirety. And it is further

**ORDERED** that counsel for Petitioner shall serve a copy of this Order with Notice of Entry within twenty (20) days of entry on counsel for Respondent.

Dated: June 2, 2015

Carol Robinson Edmead, J.S.C.

HON. CAROL EDMEAD