

**Matter of Country-Wide Ins. Co. v Kings County
Physicians Group PLLC**

2016 NY Slip Op 30117(U)

January 21, 2016

Supreme Court, New York County

Docket Number: 653927/15

Judge: Cynthia S. Kern

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This opinion is uncorrected and not selected for official publication.

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

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In the Matter of the Application of

COUNTRY-WIDE INSURANCE COMPANY,

Petitioner,

Index No. 653927/15

-against-

DECISION/ORDER

KINGS COUNTY PHYSICIANS GROUP PLLC,

Respondent.

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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>3</u>

Petitioner Country-Wide Insurance Company commenced the instant proceeding seeking an Order pursuant to CPLR § 7511 vacating an arbitration award granted in favor of respondent Kings County Physicians Group PLLC. For the reasons set forth more fully below, the petition is denied.

The relevant facts are as follows. On or about December 10, 2012, a motor vehicle insured by petitioner and driven by Natasha Sullivan was struck by another motor vehicle (the "accident"). Following the accident, Sullivan allegedly received healthcare services from respondent. Thereafter, respondent submitted to petitioner the medical bills for reimbursement for the alleged healthcare services provided to Sullivan. Petitioner denied payment for the bills submitted by respondent based on the respondent's failure to attend scheduled and rescheduled

examinations under oath ("EUO"), which had been scheduled for June 30, 2014 and July 29, 2014.

Based on the denial of its claims, respondent commenced an arbitration against petitioner. On or about April 15, 2015, an arbitration was held before Arbitrator Paul Keenan, Esq. ("Arbitrator Keenan"). Arbitrator Keenan issued an award in favor of respondent and sustained its medical bills claim against petitioner (the "Award"). According to the Arbitrator, petitioner was not entitled to deny the claim on the ground that the respondent had not appeared for the EUOs as there was evidence of cooperation by respondent. The Arbitrator found that there was correspondence between the parties indicating that there were multiple assignors and dates of service for which negotiations of EUO dates were going on, that the doctor remained willing and able to appear for an examination under oath and that the doctor would not be available during the summer but would be available any day after September 15, 2014. Moreover, the petitioner denied the respondent's claims based on respondent's failure to appear for the EUO approximately six weeks prior to September 15, 2014, the date suggested by respondent for the EUO. Under these circumstances, the Arbitrator made a finding that there was evidence of cooperation by respondent. In making the determination, the Arbitrator relied on a Supreme Court case which held that in order to establish that a failure to attend an EUO was willful, the insurer was required to show that there was a willful and avowed obstruction involving a pattern of noncooperation for which no reasonable excuse was offered.

Petitioner appealed the Award on the ground that the Award was arbitrary and capricious and not rationally based as the respondent had failed to appear for two scheduled EUOs. The Master Arbitrator affirmed the Award in its entirety stating that the Arbitrator's finding that respondent did not demonstrate a lack of cooperation in appearing for the EUO was not clearly contrary to law. Petitioner now seeks to vacate the Award on the grounds that the lower Arbitrator exceeded his power and the Master Arbitrator erred in affirming the award.

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 an application to vacate or modify an award may be made by a party within ninety days after its delivery to him. Pursuant to CPLR § 7511(b),

1. 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.

A petition to vacate an award pursuant to CPLR § 7511(b)(1)(iii) will be granted only when one

of the following circumstances is shown: (1) the arbitrator has exceeded a specifically enumerated limitation on his authority; (2) the decision is totally irrational; or (3) the award is violative of a strong public policy. See *Board of Education of the Dover Union Free School District v. Dover-Wingdale Teachers Assn*, 61 N.Y.2d 913 (1984). Courts are reluctant to disturb the decisions of arbitrators lest the value of this method of resolving controversies be undermined. *Goldfinger v. Lisker*, 68 N.Y.2d 225, 230 (1986). Even in circumstances where an arbitrator makes errors of law or fact, courts will not assume the role of overseers to conform the award to their sense of justice. *Matter of New York State Correctional Officers & Police Benevolent Assn. v. State of New York*, 94 N.Y.2d 321, 326 (1999).

In the instant action, the petition to vacate the Award is denied as this court finds that the Arbitrator did not exceed his authority and that the Master Arbitrator did not err in affirming the Award. It was not irrational, arbitrary or capricious or in excess of his authority for the Arbitrator to conclude that the respondent was cooperating with the petitioner with respect to the petitioner's request for EUOs by agreeing to appear for the EUOs at the conclusion of the summer. As a result, there was a rational basis for the Arbitrator to conclude that it was improper for the petitioner to deny the claims on the ground that the doctor failed to attend the EUOs. Accordingly, the petition to vacate the Award is denied.

Pursuant to CPLR § 7511(e), upon the denial of a motion to vacate or modify, the court shall confirm the award. Thus, the Award, rendered in favor of respondent and against

petitioner and the Master Arbitrator's affirmance thereof, is confirmed. It is hereby

ORDERED and ADJUDGED that the Award is confirmed. Settle order and judgment.

Dated: 1/21/16

Enter: _____

PK

J.S.C.

CYNTHIA S. KERN
J.S.C.