

USAA Gen. Indem. Co. v Queens Surgi Ctr.
2016 NY Slip Op 30357(U)
February 23, 2016
Supreme Court, New York County
Docket Number: 162191/15
Judge: Kathryn E. Freed
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

-----X

In The Matter of the Application of
USAA GENERAL INDEMNITY COMPANY,

Petitioner,

-against-

QUEENS SURGI CENTER a/a/o
CHRISTIAN ORTIZ,

Respondent(s).

-----X

KATHRYN E. FREED, J.S.C.

DECISION AND ORDER
Index No.162191/15
Mot. Seq. No. 001

RECITATION, AS REQUIRED BY CPLR 2219 (a), OF THE PAPERS CONSIDERED IN THE REVIEW OF THIS MOTION:

PAPERS	NUMBERED
NOTICE OF PETITION AND PETITION	1, 2 (Exs. A-H)

UPON THE FOREGOING CITED PAPERS, THIS DECISION/ORDER ON THE MOTION IS AS FOLLOWS:

Petitioner USAA General Indemnity Company moves, pursuant to CPLR 7511 (b) (1) (i) and (b) (1) (iii), for an order vacating a master arbitration award, dated August 25, 2015, as well as the arbitration award dated May 30, 2015 which it confirmed, on the ground that the arbitrators who rendered these awards exceeded their authority. After a review of petitioner’s papers and the relevant statutes and case law, the petition, which is unopposed, is **denied**.

FACTUAL AND PROCEDURAL BACKGROUND:

On June 14, 2013, an accident occurred involving a vehicle registered in New York State and insured by petitioner. Petition, at par. 3.¹ Christian Ortiz, an individual insured under petitioner’s

¹Unless otherwise noted, all references are to the petition submitted in support of the application.

policy, received healthcare services from respondent Queens Sugi Center as a result of the accident and respondent submitted medical bills to petitioner for reimbursement. *Id.*, at pars. 4-6.

On May 16, 2015, this matter proceeded to arbitration before arbitrator Bernadette Connor, Esq. Petitioner maintains that it provided the arbitrator with “payout documentation and pending arbitration award evidencing that [its] policy would be exhausted after the recent award was paid out.” *Id.*, at par. 7. It further claims that it sought to adjourn the arbitration “pending the outcome of a Master Arbitration on a case involving the same assignor and policy, in order to determine whether any benefits would remain” but that the request was denied. *Id.*, at par. 7.

In an award dated May 30, 2015, the arbitrator granted respondent’s claim in its entirety, holding that petitioner “erroneously denied payment based on the 45 day rule as respondent clearly submitted the bill timely.” Ex. B to Petition.

Petitioner then pursued master arbitration on the ground that the award of the arbitrator was arbitrary and capricious and that the lower arbitrator misapplied the law with respect to the exhaustion of the policy limits. The master arbitrator affirmed the arbitration award in its entirety, stating, *inter alia*, as follows:

The arbitrator found that [petitioner] received a bill for services rendered on November 30, 2013 within 45 days of service. That [petitioner] denied payment on February 15, 2015. That [petitioner] erroneously denied payment based upon the 45 days rule. Had it not been for petitioner’s late and erroneous denial, [respondent] would not have lost its place in terms of priority of payment. Therefore, [respondent’s] claim was granted as there was no exhaustion of policy limits. I [thus] find that the arbitrator’s award that there was no exhaustion of policy limits was not arbitrary, capricious, or contrary to law.

Ex. F to Petition.

Petitioner now moves to vacate the awards of the arbitrator and master arbitrator. In support of the motion, petitioner submits a copy of the policy under which Christian Ortiz was covered, the awards of the arbitrator and master arbitrator, the conciliation submission submitted by petitioner in connection with the arbitration, papers pertaining to a related arbitration which petitioner maintains could impact on its policy limits, a medical payment ledger, and the affidavit of Laura McNamee, a Senior Litigation Manger for petitioner.

POSITION OF THE PETITIONER:

Petitioner argues that the awards of the arbitrator and master arbitrator must be vacated on the grounds that they are arbitrary and capricious and exceed the scope of the arbitrators' authority because they rendered arbitral awards in excess of petitioner's policy limits.²

LEGAL CONCLUSIONS:

A party may move to vacate the award of an arbitrator pursuant to CPLR 7511(b)(1)(iii) where the arbitrator "exceeded his [or her] power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made." In the context of no-fault arbitrations, "an arbitration award made in excess of the contractual limits of an insurance policy has been deemed an action in excess of authority." *State Farm Ins. Co. v Credle*, 228 AD2d 191 (1st Dept 1996). Here, however, petitioner has not shown that the arbitrator or master arbitrator exceeded

²Although petitioner moves pursuant to CPLR 7511(b)(1)(i) (corruption, fraud, or misconduct of the arbitrator) and CPLR 7511 (b)(1)(iii) (exceeding of authority by arbitrator), it focuses its argument on the grounds set forth in paragraph (b)(1)(iii).

their authority.

In support of its argument, petitioner submits the affidavit of Laura McNamee, a Senior Litigation Manager for petitioner. In it, Ms. McNamee states that a total of \$48,933.32 has been paid out in combined no-fault benefits on the petitioner's policy and that the amount remaining on the \$50,000 policy is therefore \$1,066.68. Ex. H to Petition at par. 12. Ms. McNamee then speculates that, since "there is no question that payment will be made pursuant to the original arbitrator's decision" in the related case of Apex Medical P.C. a/a/o Christian Ortiz, the policy should [thus] be considered exhausted" for the purposes of this motion. Ex. H to Petition, at par. 12. However, it is difficult to know how Ms. McNamee can be so prescient. If the master arbitrator in the related action decides not to make an award, or decides that an award less than \$1,066.68 is warranted, then petitioner's policy will not have been exhausted. Moreover, Ms. McNamee's statement that the policy should be "considered exhausted" is tantamount to a concession that it has not actually been exhausted.

In light of the foregoing, petitioner's argument that the arbitrator and master arbitrator exceeded their authority in rendering their awards is without merit.

Therefore, in accordance with the foregoing, it is hereby:

ORDERED that petitioner's motion to vacate the arbitration award and the master arbitration award is denied; and it is further,

ORDERED that the proceeding is dismissed in its entirety; and it is further,

ORDERED that the Clerk of the Court is directed to enter judgment accordingly; and it is further,

ORDERED that this constitutes the decision and order of this Court.

Dated: February 23, 2016

ENTER:



KATHRYN E. FREED, J.S.C.

**HON. KATHRYN FREED
JUSTICE OF SUPREME COURT**