SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6

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ALLSTATE NEW JERSEY INSURANCE COMPANY,

Petitioner,

Index No. 653658/2015

-against-

Decision and Order

ACE AMERICAN INSURANCE COMPANY,

Respondent.

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JOAN B. LOBIS, J.S.C.:

This arbitration related proceeding stems from an automobile accident on March 11, 2012. Petitioner sent notice of the underlying claim to respondent on June 19, 2014. Its letter to respondent set forth the details of the claim and indicated petitioner's desire to settle the matter amicably, but noted that petitioner "reserve[d] the right to file inter-company arbitration without further communication." Subsequently, there was a conversation between the attorneys for petitioner and respondent, which respondent confirmed in a letter dated June 26, 2014. The letter noted that petitioner had not filed an arbitration at that point.

Petitioner filed a demand for arbitration around September 10, 2014. On November 18, 2014, Arbitration Forums, Incorporation held a hearing in an insurance dispute between petitioner and respondent. Respondent did not appear at the hearing. Upon petitioner's evidence, the arbitrator found damages in the amount of $11,002.59, and granted an award for eighty percent of this amount, or $8,802.07. Petitioner served notice of the award by letter around November 21, 2014. According to petitioner, it has made numerous attempts to get respondent to pay the award. When it received no payment from respondent, it brought this proceeding to confirm the award. It

filed the petition and notice of petition with the Supreme Court of New York County on November 4, 2015, within one year of the arbitration.

Respondent opposes the petition. It states that Allstate was not properly made a party to the arbitration. Although respondent insures United Road Services (United Road), which owns the vehicle involved in the accident, the amount in controversy did not reach the $1,000,000 deductible in the policy. Thus, respondent states, the parties who should have received notice of the proceeding are Johnny Sherwood, the driver for United Road, and United Road itself. It alleges that neither Allstate nor United Road received notice of the arbitration, and neither is part of the proceeding at hand. It submits the affidavit of John Ross, an employee of the claims processor for respondent and United Road Services, who swears that neither United Road Services nor respondent received notice of the arbitration. Respondent additionally points out that United Road and Mr. Sherwood have commenced a proceeding to vacate the arbitration award in Bronx County, where the incident occurred. Accordingly, as the two petitions involve the same facts, respondent argues, they should be consolidated. It annexes a copy of the Order to Show Cause for that petition. It further states that there is a meritorious defense to the arbitration itself, but that issue is not proper for judicial review.

In reply, petitioner annexes a letter from respondent's counsel dated June 26, 2014 which indicates that counsel had received information about the claim. Petitioner challenges the allegation that respondent was not served, as Arbitration Forums itself serves the respondents before it with notice and at no time indicated it had been unable to serve Allstate. Petitioner further states that, assuming for the sake of argument that respondent did not receive proper notice of the

arbitration, respondent still cannot request that the award be vacated because it received notice of the award itself in November of 2014 and the ninety-day period in which to assert a challenge has passed. Petitioner also stresses that respondent has not taken any action toward vacating the arbitration award, as it has not brought a petition to vacate or cross-moved to vacate here. It raises additional challenges to the appropriateness of the Bronx order to show cause, which the Court does not address because those arguments should be raised in the Bronx proceeding.

Initially, the Court notes that respondent's arguments are timely, as it has the right to challenge the award in opposition to a petition to confirm even if the ninety-day limitations period in which to bring a petition to vacate has expired. See Pine St. Assoc., L.P. v. Southridge Partners, L.P., 107 A.D.3d 95, 100 (1st Dep't 2013)(citing Brentnall v. Nationwide Mutual Ins. Co., 194 A.D.2d 537, 538 (2nd Dep't 1993)). The Court does not reach the remainder of the arguments because respondent has raised an issue of fact concerning service through the affidavit of Mr. Ross. Petitioner's counter-argument – that pursuant to its rules Arbitration Forums was to provide respondent with notice and Arbitration Forums did not indicate a failure to serve and in fact held the arbitration with respondent in default – merely attacks the credibility of respondent's argument. Until the issue of service is resolved the Court cannot address the remaining arguments. Therefore, it is

ORDERED that the issue of whether respondent was served with notice of the arbitration is referred to a special referee to hear and report, or hear and determine, if the parties so stipulate in writing, pursuant to C.P.L.R. § 4317; and it is further

ORDERED that this petition is held in abeyance pending receipt of the report and recommendations of the special referee and a motion pursuant to C.P.L.R. Rule 4403 or receipt of the determination of the special referee or the designated referee; and it is further

ORDERED that within fifteen (15) days of the date of notice of entry of this order, respondent, the party who has challenged notice, is to serve a copy of this order with notice of entry, together with the Special Referee Information Sheet, on the Special Referee Clerk (Room 119) to arrange a date for the reference to a special referee. In the event the parties do not agree to hear and determine, then, in accordance with C.P.L.R. Rule 4403 and 22 N.Y.C.R.R. § 202.44(a), following the filing of the report and notice to each party of the filing of the report, plaintiff shall move to confirm or reject all or part of the report within fifteen (15) days after notice of the filing of the report. If plaintiff fails to do so, then defendant shall so move within thirty (30) days after notice of the filing is given. See Gould v. Venus Bridal Gown and Accessories Corp., 148 Misc.2d 589 (Sup. Ct. N.Y. Co. 1990).

Dated: Mar. 18, 2016

ENTER:

JOAN B. LOBIS, J.S.C.