Country-Wide Ins. Co. v Senat
2016 NY Slip Op 30647(U)
April 11, 2016
Supreme Court, New York County
Docket Number: 653750/2015
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

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COUNTRY-WIDE INSURANCE COMPANY,

Petitioner,

Index No. 653750/2015

For an Order Pursuant to Article 75 of the CPLR
Vacating a Lower and Master Arbitration Award

-against-

DECISION/ORDER

ERIC SENAT, M.D. a/a/o THEA BAPTISTE,

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.....	1
Affirmation in Opposition	2
Replying Affidavits.....	3
Exhibits.....	4

Petitioner Country-Wide Insurance Company ("petitioner" or "Country-Wide") commenced the instant proceeding seeking an order pursuant to CPLR § 7511 vacating an arbitration award granted in favor of respondent Eric Senat, M.D. a/a/o Thea Baptiste ("respondent" or "Senat"). For the reasons set forth below, the petition is denied.

The relevant facts are as follows. On or about July 9, 2012, a motor vehicle insured by petitioner and driven by petitioner's assignee Thea Baptiste ("Ms. Baptiste") was struck by another motor vehicle (the "accident"). Following the accident, on or about January 21, 2013, Ms. Baptiste allegedly received healthcare services from respondent. On or about February 7, 2013, respondent submitted to petitioner the medical bills for reimbursement for the alleged

healthcare services provided to Ms. Baptiste. Petitioner requested respondent to provide information about respondent's medical licensing and corporate structure on or about February 28, 2013, and renewed the request on or about March 31, 2013 when respondent failed to respond. Respondent has not provided petitioner with the requested information. On March 11, 2014 and March 31, 2014, petitioner mailed requests that respondent attend Examinations Under Oath ("EUO") scheduled for March 25, 2014 and April 14, 2014, respectively. Respondent failed to attend either of these EUOs. On or about April 28, 2014, petitioner issued a form denying respondent's claim for no-fault benefits on the basis of these EUO no-shows.

Based on the denial of its claim, respondent commenced an arbitration against petitioner. On March 19, 2015, an arbitration was held (the "arbitration") before Arbitrator Frank Marotta ("Arbitrator Marotta"). In an award dated March 22, 2015, Arbitrator Marotta held that respondent was entitled to reimbursement from petitioner (the "Award"). Specifically, Arbitrator Marotta found that respondent had established its *prima facie* entitlement to no-fault benefits on the basis of its submission of proof that their billing forms had been mailed and received and that payment of benefits was overdue. Arbitrator Marotta further found that petitioner had not established its entitlement to deny the claim on the basis of the EUO no-shows as it failed to establish that the EUO scheduling letters were timely sent pursuant to 11 NYCRR § 65-3.5(b), which requires additional requests for verification to be made within 15 business days of receipt of the prescribed verification forms. Arbitrator Marotta awarded respondent the amount of $527.62 plus interest, attorney's fees and the fee paid to the Designated Organization.

Thereafter, petitioner appealed Arbitrator Marotta's Award on the ground that it was contrary to established law. On or about August 5, 2015, Master Arbitrator Marilyn Felenstein

("Arbitrator Felenstein") affirmed the Award in its entirety, stating that "[b]ased on the legal authority cited, it is, therefore, the determination of the Master Arbitrator that the lower arbitrator had a rational basis for his award based on the evidence presented." Petitioner now seeks to vacate the Award on the grounds that (i) Arbitrator Marotta exceeded his authority, or so imperfectly executed it, that a final and definite award upon the subject matter submitted was not made, and (ii) Arbitrator Felenstein 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 "[a]n 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:
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> > (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' Ass'n, 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). When reviewing a compulsory no-fault arbitration award where an error of law is at issue, the test is "whether any reasonable hypothesis can be found to support the questioned interpretation." *Matter of Carty v. Nationwide Ins. Co.*, 212 A.D.2d 462 (1st Dept 1999). "Generally, a court will not set aside an arbitrator's award for errors of law or fact unless the award is so irrational as to require vacatur." *Id.*

The court finds that the Award should be confirmed as the Award has a rational basis. Pursuant to well-established law cited by Arbitrator Marotta, an insurer must establish that its "initial and follow-up requests for verification were timely mailed" to make a *prima facie* showing of entitlement to deny a claim "based on the assignors' failure to appear at scheduled EUOs." *Urban Radiology, P.C. v. Clarendon Natl. Ins. Co.*, 31 Misc.3d 132(A) (App Term 2nd, 11th and 13th Districts). Arbitrator Marotta found that petitioner had not established its entitlement to deny the claim on the basis of the EUO no-shows as it failed to establish that the EUO scheduling letters were timely mailed pursuant to 11 NYCRR § 65-3.5(b).

Petitioner's argument that the Award should be vacated on the ground that Arbitrator Marotta made an error of law is without basis. Petitioner specifically argues that, because it had not received a sufficient response to its February 28, 2013 and March 31, 2013 requests for

information about respondent's medical licensing and corporate structure, its time to pay or deny the claim was tolled until it received the requested information, and therefore it was "not bound" by the 15-day timeframe of 11 NYCRR § 65-3.5(b) and its denial of the claim on the basis of the EUO no-shows was timely. However, petitioner has cited no case law holding that a request for information about medical licensing and corporate structure is a request for additional verification "to establish proof of claim" pursuant to 11 NYCRR § 65-3:5(b) which tolls an insurer's time to pay or deny the claim. The cases on which petitioner rely instead merely state the general principal that an insurer is not obligated to issue a denial of claim form until it receives the additional verification requested pursuant to 11 NYCRR § 65-3.5(b). *See, e.g., Mt. Sinai Hosp. v. Allstate Ins. Co.*, 25 A.D.3d 673, 674 (2nd Dept 2006) (holding that a request for medical records tolled the insurer's time to pay or deny the claim). Arbitrator Marotta's interpretation of the law to require an insurer to establish that it timely scheduled the EUOs where EUO no-shows serve as the basis for the denial of the claim, notwithstanding the fact that the insurer had not yet received unrelated information it previously requested, was not in error.

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 Arbitrator Felenstein's affirmance thereof, is confirmed. It is hereby

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

Dated: 4/11/16

Enter: _____
J.S.C.
CYNTHIA S. KERN
J.S.C.