

**Hereford Ins. Co. v American Tr. Ins. Co.**

2016 NY Slip Op 32082(U)

March 31, 2016

Supreme Court, Queens County

Docket Number: 9947/15

Judge: Carmen R. Velasquez

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MEMORANDUM

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE CARMEN R. VELASQUEZ IAS PART 38  
Justice

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HEREFORD INSURANCE COMPANY A/S/O  
OMAR 18 INC.,

Plaintiff,

-against-

Index No. 9947/15

Motion

Date: November 13, 2015

M# 1

AMERICAN TRANSIT INS. CO.,

Defendant.

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This application by the petitioner to confirm an arbitration award pursuant to CPLR 7510 is decided as follows:

At the outset, the court will amend the petition to correct the amount of the arbitration award to \$25,097.18. Petitioner requested that the arbitration award in the sum of \$27,885.76 be confirmed. However, as noted by the petitioner in the Reply affirmation, the correct amount is \$25,097.18.

Petitioner commenced the instant proceeding to confirm an arbitration award dated February 3, 2015 in its favor in the sum of \$25,097.18. The dispute at the arbitration hearing arose out of an automobile accident on July 13, 2013 at the intersection of Malcolm X Boulevard and Quincy Street in Kings County. Following the hearing, the arbitrator found that applicant/petitioner proved 90% liability against respondent. The arbitrator found

that the respondent's vehicle made a left turn in front of petitioner's vehicle, failing to yield the right of way. With respect to damages, the arbitrator noted that the respondent disputed charges for overlapping dates of service. However, the arbitrator also stated that overlapping dates of service is a general and vague dispute and lacks the required detail and specificity. Petitioner now brings the instant application to confirm the arbitration award.

Respondent oppose the application to confirm the arbitration award and requests, in its opposing affirmation, that the award be vacated. Respondent asserts that the award is arbitrary and capricious and the arbitrator exceeded his powers in making the award.

Although the respondent argues that the arbitration award should be vacated, it never made a motion to vacate the award pursuant to CPLR 7511(a). In any event, the court finds that there is no basis to vacate the award. An arbitration award may be vacated on the application of a party who participated in the arbitration proceeding if that party's rights were prejudiced by (i) the corruption, fraud or misconduct in procuring the award; (ii) the partiality of a neutral arbitrator; (iii) the arbitrator exceeding his power so that a final or definite award was not made; or (iv) the arbitrator failing to follow the procedures set forth in CPLR Article 75. (CPLR 7511[b][1]; *Matter of Wieder v*

*Schwartz*, 35 AD3d 752, 753 [2d Dept 2006].) In addition to the grounds listed in CPLR 7511(b), a court may vacate an arbitration award when it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on an arbitrator's power under CPLR 7511(b). (*Matter of TC Contr., Inc. v 72-02 Northern Blvd. Realty Corp.*, 39 AD3d 762, 763 [2d Dept 2007]; *Matter of Henneberry v ING Capital Advisors, LLC*, 37 AD3d 353, 353 [1st Dept 2007].)

There is, however, a strong public policy in favor of the binding authority of an arbitration award. (*Hackett v Millbank, Tweed, Hadley & McCloy*, 86 NY2d 146, 154 [1996].) The purpose of arbitration is to allow final, binding resolution of the parties' claims without resorting to the courts. Thus, judicial review of an arbitration award is extremely limited, and great deference is given to an arbitration award. (*Wien & Malkin LLP v Helmsley-Spear, Inc.*, 6 NY3d 471, 479 [2006]; *Allstate Ins. Co. v Geico*, 100 AD3d 878, 878 [2d Dept 2012]; *Matter of Broadcast Music, Inc. v Borinquen Broadcasting Co.*, 13 Misc 3d 1228(A) [Sup Ct, New York County [2006].) A party seeking to overturn an arbitration award pursuant to CPLR 7511(b)(1) bears a heavy burden, and must establish a ground for vacatur by clear and convincing evidence. (*David v Byron*, 130 AD3d 772 [2d Dept 2015]; *Matter of Denaro v Cruz*, 115 AD3d 742, 742-743 [2d Dept 2014]. A court shall not engage in "judicial second guessing" of

the arbitrator's determination of those issues of fact or law presented. (*Hackett v Millbank, Tweed, Hadley & McCloy*, 86 NY2d at 155.) An arbitrator is not bound by principles of substantive law or rules of evidence and may do justice as he sees fit.

(*Matter of Erin Constr. & Dev. Co. v Meltzer*, 58 AD3d 729, 730 [2d Dept 2009]; *Hughes Contr. Indus., Ltd. v A & N Restoration, Inc.*, 39 AD3d 378, 379 [1st Dept 2007].) Indeed, an arbitration award will not be vacated even though the court concludes that the arbitrator's interpretation of the agreement misconstrues its plain meaning or misapplies substantive rules of law. (*Matter of Silverman v Benmor Coats, Inc.*, 61 NY2d 299, 308 [1984]; *Matter of Wicks Constr. (Green)*, 295 AD2d 527, 528 [2d Dept 2002].)

Even where an arbitrator has made an error of law or fact, courts generally may not disturb the decision of the arbitrator.

(*Matter of Falzone [New York Cent. Mut. Fire Ins. Co.]*, 15 NY3d 530, 535 [2010].)

Here, the arbitrator found that the petitioner proved all of its damages, and respondent failed to rebut the petitioner's showing with any documentary proof. In addition, the arbitrator was under no obligation to adjourn the hearing if he did not believe that the respondent's argument regarding damages was valid. (see *Allstate Ins. Co. v Fiduciary Ins. Co. of Am.*, 44 Misc 3d 1205[A][Sup Ct, Suffolk County 2014].) Thus, petitioner is entitled to confirmation of the arbitration award.

Accordingly, this application by the petitioner to confirm the arbitration award pursuant to CPLR 7510 is granted.

The request by respondent in its affirmation in opposition to vacate the arbitration award is denied.

Settle Judgment.

Dated: March 31, 2016

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CARMEN R. VELASQUEZ, J.S.C.