

Country-Wide Ins. Co. v Bay Needle Care Acupuncture, P.C.
2018 NY Slip Op 32138(U)
August 30, 2018
Supreme Court, New York County
Docket Number: 651697/2015
Judge: Debra A. James
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES

PART

IAS MOTION 59EFM

Justice

-----X

COUNTRY-WIDE INSURANCE COMPANY,

Petitioner,

- v -

BAY NEEDLE CARE ACUPUNCTURE, P.C. a/s/o EDWARD
RITCHIE,

Respondent.

INDEX NO.

651697/2015

MOTION DATE

08/28/2018

MOTION SEQ. NO.

002

DECISION AND ORDER

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29, 30, 31

were read on this motion to/for

AMEND/MODIFY DECISION/ORDER/JUDGMENT.

ORDER

Upon the foregoing documents, it is

ORDERED that pursuant to CPLR 5019(a) the motion of respondent to modify this court's order dated October 28, 2016 to award attorneys' fees, as well as fees for the arbitrator and master arbitrator and to confirm the lower arbitration award is granted without opposition; and it is further

ORDERED that to the extent respondent seeks additional discretionary attorneys' fees, which is opposed, such application is severed and referred to a Special Referee to hear and determine any such additional reasonable attorney's fees; and it is further

ADJUDGED that this court's Order dated October 28, 2016 is corrected as follows;

The petition to vacate the lower arbitration award October 17, 2014 is denied and such award rendered in favor of respondent and against petitioner is confirmed; and it is further

ADJUDGED that respondent Bay Needle Care Acupuncture, PC, having an address at 7612 Bay Parkway, Suite B, Brooklyn NY 11214, do recover from petitioner Country-Wide Insurance Company, having an address at 40 Wall Street, New York, NY 10005 , the amount of \$ 3,958.04, plus interest at the rate of 2% per month from the date of November 27, 2012 , as computed by the Clerk in the amount of \$ _____ , attorneys' fees in the amount of 20% of the foregoing total, plus arbitrator's fee of \$40, plus master arbitrator's fee of \$130, together with costs and disbursements in the amount of \$ _____ as taxed by the Clerk, for the total amount of \$ _____ , and that the petitioner have execution therefor; and it is further

ORDERED that respondent's claim for additional discretionary attorneys' fees is severed and the issue of the reasonable value of such additional legal services rendered and paid by respondent is severed and referred to the Special Referee Clerk for assignment to a Special Referee to hear and determine and, the Clerk shall enter judgment upon such determination without further motion; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further;

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed with the hearing, on the

date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issue(s) specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the "References" link on the court's website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules)].

DECISION

As for respondent's entitlement to additional reasonable attorneys' fees, see Country-Wide Insurance Company v Bay Needle Care Acupuncture, P.C., 162 AD3d 407 (1st Dept. 2018).

<u>8/30/2018</u>			
DATE		DEBRA A. JAMES, J.S.C.	
CHECK ONE:	☒ CASE DISPOSED	☐ NON-FINAL DISPOSITION	
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☒ REFERENCE