

Country-Wide Ins. Co. v Geico Gen. Ins. Co.
2018 NY Slip Op 32891(U)
November 13, 2018
Supreme Court, New York County
Docket Number: 653317/2018
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 6

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COUNTRY-WIDE INSURANCE COMPANY a/s/o
OLUWASENMILORE OLATUNJI,

Index No.
653317/2018

Petitioner,

Decision
And
Order

- against -

GEICO GENERAL INSURANCE COMPANY,

Mot. Seq. #1

Respondent.
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Petitioner, Country-Wide Insurance Company ("Petitioner" or "CWI"), brings this Petition to vacate the arbitration award ("the Award") rendered by Arbitration Forums Inc. ("Arbitration Forums" or "Arbitration") on April 5, 2018, to deny respondent Geico General Insurance Company's ("Respondent" or "Geico") Award, and remand this matter back to Arbitration Forums. CWI contends that the Award was irrational, not supported by the evidence, and arbitrary and capricious. Petitioner further contends that the Award should be vacated because its rights were prejudiced by arbitrating a matter that does not qualify for arbitration. Geico opposes.

Background/Factual Allegations

This proceeding arises out of the accident involving CWI's claimant Oluwasenmilore Olatunji as the driver of Vehicle #1 and Geico's claimant Charles Ricketts, Jr. as the driver of Vehicle #2, that occurred on April 22, 2017. According to the police report, Vehicle #1 was driving northbound on 8th Avenue when the driver attempted to change from the right lane to the left lane to avoid a double-parked vehicle, and collided with Vehicle #2. Vehicle #2 was driving northbound on 8th Avenue and was in the left lane when Vehicle #1 collided into Vehicle #2, which caused Vehicle #2 to collide with a parked Vehicle #3. Following the collision, Vehicle #1 reversed into Vehicle #4 (described in the police report as a taxi cab) which was driving northbound on 8th Avenue.

Following the accident, Geico commenced an arbitration action against CWI to recover personal injury insurance protection insurance ("PIP") benefits paid to its insured driver. An arbitration was commenced on April 4, 2018 between Geico and CWI before Arbitration Forums. On April 5, 2018, Arbitration Forums issued an award finding that CWI to be fully at fault for the accident and awarding Geico damages in the amount of \$7,516.42.

Parties' Contentions

Petitioner contends that pursuant to New York Insurance Law § 5105(a), the right to recover PIP from the insurer of a covered person exists when a "vehicle for hire" or a vehicle weighing over 6,500 pounds is involved in the accident. Petitioner contends that on April 22, 2017, there were two "separate and distinct" accidents – the first accident involving Vehicle #1 and Vehicle #2, the CWI and Geico vehicles, which were under 6500 pounds and were not vehicles for hire. The second accident occurred when Vehicle #1 reversed into Vehicle #4, a taxi cab. Petitioner contends that the first accident, not the second accident, was the subject of the arbitration and the second accident involving the taxi cab should not have been considered. Petitioner contends, however, that Respondent misrepresented that the accident was one accident, leading Arbitration Forums to "disregard[]" their own rules by issuing an award for Respondent without establishing that Respondent meets the requirements for loss transfer arbitration."

Respondent contends that the Petition is deficient on its face because pursuant to CPLR § 7507, Petitioner did not annex a signed copy of the Award. Respondent further contends that Petitioner has failed to show that the Award itself is irrational and that there was no evidence supporting the decision. Respondent contends, "The Arbitrator fully considered the evidence before her (Exhibit 'B' to Petition) and upon considering such evidence, ruled that not only was the vehicle insured by Petitioner fully responsible for the accident but, further also ruled that this accident involved a taxi cab." Lastly, Respondent argues that the Court should confirm the Award.

Legal Standard

CPLR §7511(b) provides four grounds on which an application to confirm an arbitration award may be denied: fraud; partiality by the arbitrator; the arbitrator exceeding his or her authority; and a failure to follow the procedures of CPLR Article 75.

Judicial disturbance of an arbitration award on the grounds that an arbitrator exceeded his powers is appropriate “only if the award violated a strong public policy, was totally irrational, or the arbitrator in making the award clearly exceeded a limitation on [his] power specifically enumerated under CPLR 7511(b)(1).” *Rice v. Jamaica Energy Partners, L.P.*, 13 A.D.3d 255 [1st Dep’t. 2004]] (citing *New York State Correctional Officers & Police Benevolent Assn. v. State of New York*, 94 N.Y.2d 321, 326 [1999]). “Where arbitration is compulsory, our decisional law imposes closer judicial scrutiny of the arbitrator’s determination under CPLR 7511(b).” *Motor Vehicle Acc. Indemnification Corp. v. Aetna Cas. & Sur. Co.*, 89 N.Y.2d 214, 223-24 [1996]) “To be upheld, an award in a compulsory arbitration proceeding must have evidentiary support and cannot be arbitrary and capricious.” *Id.* at 224.

“Assessment of the evidence presented at an arbitration proceeding is the arbitrator’s function rather than that of the court.” *Fitzgerald v. Fahnestock & Co., Inc.*, 48 A.D.3d 246, 247 [1st Dep’t 2008] (quoting *Peckerman v. D & D Assoc.*, 165 A.D.2d 289, 296 [1st Dep’t 1991]). “An arbitral award cannot be attacked on the ground that an arbitrator refused to consider, or failed to appreciate, particular evidence or arguments.” *Genger v. Genger*, 87 A.D.3d 871, 874 n. 2 [1st Dep’t 2011]. Furthermore, “[a]bsent provision to the contrary in the arbitration agreement, arbitrators are not bound by principles of substantive law or rules of evidence.” *Lentine v. Fundaro*, 29 N.Y.2d 382, 385 [1972]. Nor can an arbitration award “be overturned merely because the arbitrator committed an error of fact or law.” *Matter of Motor Veh. Accident Indem. Corp.*, 89 N.Y.2d at 223.

Discussion

Here, Petitioner fails to meet its heavy burden of demonstrating that the Award violated a strong public policy, was totally irrational or in violation of any of the grounds enumerated under CPLR 7511(b). Petitioner has also failed to demonstrate that the Award did not have evidentiary support and was arbitrary and capricious. A review of the Arbitration Award demonstrates no indication that the decision rendered was arbitrary, capricious or subject to any of the defects set forth in CPLR 7511. The record shows that the Arbitrator weighed all relevant evidence, including the police report for the alleged accident dated April 22, 2017. The police report indicates that a taxi cab was involved in the accident and the Arbitrator found that pursuant to New York Insurance Law § 5105(a), Respondent is entitled to recover PIP benefits to its insured driver because the Petitioner was fully at fault. Petitioner argues that the Arbitrator committed an error of fact by determining that the alleged incident involved one accident and not two separate

accidents. "An arbitration award made after all parties have participated, however, will not be overturned merely because the arbitrator committed an error of fact or of law." *Motor Vehicle Acc. Indemnification Corp.*, 89 N.Y.2d at 223. Petitioner fails to meet its burden of demonstrating that the Award should be disturbed by the Court.

Wherefore it is hereby

ORDERED and ADJUDGED that the petition to vacate the Arbitration Award rendered by Arbitration Forums, Inc. on April 5, 2018, is denied and the proceeding is dismissed and the Clerk is directed to enter judgment accordingly; and it is further

ORDERED and ADJUDGED that Arbitration Forums, Inc.'s findings that Geico General Insurance Company "proved 100% liability against" Countrywide Insurance Company for the April 22, 2017 motor vehicle accident and Geico General Insurance Company was entitled to an award of full damages in the amount of \$7,516.42 is CONFIRMED; and it is further

ORDERED and ADJUDGED the Clerk is directed to enter judgment in favor of respondent Geico General Insurance Company, and against petitioner Countrywide Insurance Company in the amount of \$7,516.42, together with interest from April 5, 2018 as prayed for allowable by law until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs.

This constitutes the decision and order of the court. All other relief requested is denied.

Dated: November 13, 2018


EILEEN A. RAKOWER, J.S.C.