

American Tr. Ins. Co. v Geico Gen. Ins. Co.
2018 NY Slip Op 33323(U)
December 18, 2018
Supreme Court, New York County
Docket Number: 654262/2018
Judge: William Franc Perry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. W. FRANC PERRY

PART

IAS MOTION 23EFM

Justice

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AMERICAN TRANSIT INSURANCE COMPANY

Petitioner,

- v -

GEICO GENERAL INSURANCE COMPANY,

Respondent.

INDEX NO. 654262/2018MOTION DATE 10/16/2018MOTION SEQ. NO. 001

**DECISION, ORDER AND
JUDGMENT**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9
were read on this motion to/for

VACATE - AWARD

Petitioner American Transit Insurance Company ("ATIC"), seeks an order vacating the final arbitration award rendered by a panel of three arbitrators on May 31, 2018 (the "Award"), in favor of respondent Geico General Insurance Company ("GEICO") and against Petitioner in the amount of \$16,542.32. The Petition is submitted without opposition.

On or about June 09, 2016, non-party Alaric Wilder ("Wilder") was injured in an automobile accident in Brooklyn, NY. According to Wilder's Application for Motor Vehicle Benefits ("NF-2"), a vehicle driven by Wilder was rear ended while traveling on the Brooklyn Queens Expy. There is no Police Report or MV-104 form for the accident. As a result of the accident, GEICO, Wilder's insurer, paid \$16,542.32 in medical expenses on his behalf.

On February 14, 2018, GEICO filed for compulsory arbitration with Petitioner seeking to subrogate the payments made on behalf of GEICO's driver, Wilder. GEICO sought arbitration against ATIC as the insured for a 2011 Toyota bearing plate number T616304C. In their responses to GEICO's demand for arbitration, ATIC admitted coverage, but denied any liability for the subject accident (*see* NYSCEF No. 3, p.3 ["Admit Coverage: Yes"]).

After a hearing, on May 31, 2018, a panel of arbitrators issued an Award in favor of GEICO and against ATIC in the amount of \$16,542.32. In the Award, the panel rejected ATIC's argument that the absence of a Police Report or MV-104 form precluding holding ATIC liable for the amounts paid by GEICO. The panel found that, in light of ATIC's failure to produce any evidence that either (1) established that ATIC's insured was not involved in the accident or (2) that Wilder was not struck in the rear by ATIC's insured, Wilder's submissions were sufficient to prove 100% liability against ATIC.

Now, ATIC moves, pursuant to CPLR 7511, for an order vacating and setting aside the Award on the grounds that the panel exceeded their authority and the decision was arbitrary, capricious and imperfectly executed.

It is well settled that a party seeking to vacate an arbitration award carries a "heavy burden" (*Scollar v. Cece*, 812 NYS2d 521, 522 [1st Dept 2006], citing *Matter of New York State Correctional Officers & Police Benevolent Assn. v. State of New York*, 94 NY2d 321, 326 [1999]). An arbitration award must be upheld when the arbitrator "offers even a barely colorable justification for the outcome reached" (*Wien & Malkin LLP v. Helmsley-Spear, Inc.*, 6 NY3d 471, 479 [2006], cert. dismissed, 548 US 940, 127 S.Ct. 34, [2006] [citations omitted]). As stated by the Court of Appeals, "we have stated time and again that an arbitrator's award should not be vacated for errors of law and fact committed by the arbitrator and the courts should not assume the role of overseers to mold the award to conform to their sense of justice (*Id.*, citing, *Matter of Sprinzen [Nomberg]*, 46 NY2d 623, 629 [1979]; *Matter of New York State Correctional Officers & Police Benevolent Assn.*, supra, ["A court cannot examine the merits of an arbitration award and substitute its judgment for that of the arbitrator simply because it believes its interpretation would be the better one"])).

“The scope of judicial review of an arbitration proceeding is extremely limited” (*Elul Diamonds Co. Ltd. v. Z Kor Diamonds, Inc.*, 50 AD3d 293 [1st Dept 2008]). When determining whether to vacate an arbitration award, courts are “obligated to give deference to the decision of the arbitrator” and are constrained by the grounds set forth in CPLR §7511 (b) (1). (*Id.*). Compulsory arbitration awards, such as the award here, are subject to a broader scope of review than awards resulting from consensual arbitration and the standard of review is whether the award is supported by the evidence or other basis in reason as appears in the record (*Rose v. Travelers Ins. Co.*, 96 AD2d 551 [2d Dept 1983]; *Petrofsky v. Allstate Ins. Co.*, 54 NY2d 207, 210 [1981]). If the award is to be upheld, it cannot be arbitrary or capricious; “arbitrary action is without sound basis in reason and is generally taken without regard to facts” (*Pell v. Board of Educ of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974]).

Here, ATIC has not met its burden to demonstrate that the Award was arbitrary and capricious and without sound basis in reason. At the arbitration, GEICO presented a plate check for a 2011 Toyota, bearing plate T616304C insured by ATIC. The plate check further stated that the vehicle was being used as a Taxi. GEICO also presented the NF-2, which stated that the accident occurred when Walker was rear ended by another vehicle. In opposition, ATIC failed to produce any evidence that their vehicle was not involved in the subject accident, or that their insured did not rear end Wilder. Given the standard of review, and the review and analysis undertaken by three separate arbitrators in reaching the subject Award, this court cannot say that the Award was issued without sound basis in reason or without regard to facts.

Accordingly, it is hereby

ORDERED and ADJUDGED that American Transit Insurance Company's petition to vacate the Award is denied and the petition is dismissed; and it is further

ORDERED and ADJUDGED that pursuant to CPLR 7511 the award is confirmed; and it is further

ADJUDGED that Respondent GEICO GENERAL INSURANCE COMPANY, having an address at _____, do recover from Petitioner AMERICAN TRANSIT INSURANCE COMPANY, the amount of \$16,542.32, plus interest at the statutory rate of 2% per month from June 31, 2018, pursuant to 11 NYCRR 65-3.9, as computed by the Clerk in the amount of \$ _____, together with costs and disbursements in the amount of \$ _____ as taxed by the Clerk, for the total amount of \$ _____ and that Respondent have execution therefor; and it is further

ORDERED that the clerk enter judgment accordingly.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

12/18/2018

DATE

CHECK ONE:

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CASE DISPOSED

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GRANTED

☒

DENIED

APPLICATION:

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SETTLE ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE

W. FRANC PERRY, J.S.C.