

Country-Wide Ins. Co. v Hereford Ins. Co.
2019 NY Slip Op 30099(U)
January 8, 2019
Supreme Court, New York County
Docket Number: 655481/2018
Judge: Carol R. Edmead
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
COUNTY OF NEW YORK: PART 35

-----X
COUNTRY-WIDE INSURANCE COMPANY,
A/A/O DISANO DEMOLITON COMPANY,

DECISION AND ORDER

Index No.: 655481/2018

Motion Sequence 001

Petitioner,

-against-

HEREFORD INSURANCE COMPANY,

Respondent.

-----X
CAROL R. EDMEAD, J.S.C.:

In this Article 75 Action, Petitioner Country-Wide Insurance Company (Petitioner) moves to vacate an arbitration award issued in favor of Respondent Hereford Insurance Company (Respondent). In reply, Respondent opposes the motion and cross-moves for an order affirming the award pursuant to CPLR 7510. For the reasons set forth below, the Court denies the petition and grants Respondent’s cross motion in its entirety.

BACKGROUND FACTS

This action arises out of a car accident that occurred on November 30, 2015, when a vehicle owned by Respondent’s claimant, Plikh Hacking Corporation, was struck by a car owned by Petitioner’s claimant, Disano Demolition Company. According to the police report, the accident involved four vehicles, with two vehicles driving in front of Petitioner’s vehicle (NYSCEF doc No. 4). When Respondent’s vehicle merged into the exit lane in between the first two vehicles and Vehicle #4 (Petitioner), Petitioner was unable to stop in time and caused the

collision (*Id.*). The police report cites Petitioner and Respondent's vehicles for following too closely, and additionally cites Respondent for passenger distraction (*Id.*).

Following the accident, Respondent commenced an arbitration action against Petitioner to recover personal injury protection insurance benefits ("PIP") paid to its insured driver. On August 9, 2018, Arbitration Forums, Inc. issued an award finding Petitioner to be fully at fault for the accident and awarding Petitioner damages in the amount of \$50,000 (NYSCEF doc No. 3). Petitioner now moves, pursuant to CPLR 7511, to vacate the award on the grounds that the arbitrator erred in its interpretation of the police report of the accident (NYSCEF doc No. 1). According to Petitioner, the arbitrator should have applied comparative negligence and not awarded full damages to Respondent. In response, Respondent has filed a cross-petition asking the Court to deny the petition and award judgment in favor of Respondent in the amount of the full arbitration award.

DISCUSSION

CPLR 7511(b)(1)(i) permits a court to vacate an arbitrator's award where the award was procured by corruption, fraud, or misconduct. An arbitration award may be vacated pursuant to CPLR 7511(b)(1)(iii) where an arbitrator exceeded his or her power, including where the award violates strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power (*see Matter of Isernio v Blue Star Jets, LLC*, 140 AD3d 480, 480 [1st Dept 2016]). Where, as here, arbitration is compulsory (*see Insurance Law* § 5105), closer judicial scrutiny of the arbitrator's determination under CPLR 7511(b) is required (*see Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223 [1996]; *Matter of*

Furstenberg [Aetna Cas. & Sur. Co.–Allstate Ins. Co.], 49 NY2d 757 [1980]; *Mount St. Mary's Hosp. v Catherwood*, 26 NY2d 493 [1970]).

While closer judicial scrutiny is warranted for awards in compulsory arbitration, the award will still not be vacated even “where the error claimed is the incorrect application of a rule of substantive law, unless it is so ‘irrational as to require vacatur’” (*Matter of Smith [Firemen's Ins. Co]*, 55 NY2d 224, 232 [1982]). To be upheld, an award in a compulsory arbitration proceeding need only have evidentiary support and cannot be arbitrary and capricious (*See - Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223 [1996]).

"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, 850 N.Y.S.2d 452 [1st Dep't 2008], quoting *Peckerman v. D & D Assocs.*, 165 A.D.2d 289, 296, 567 N.Y.S.2d 416 [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, 929 N.Y.S.2d 232 [1st Dep't 2011]).

Here, Petitioner fails to meet its high burden of demonstrating that the award should be vacated under CLRP 7511(b) as it violated a strong public policy or was completely irrational. Petitioner has also failed to demonstrate that the award did not have evidentiary support and was arbitrary and capricious. A review of the award demonstrates no indication that the decision rendered was arbitrary or capricious. The record shows that the arbitrator weighed all relevant evidence, including all details from the police report submitted by Petitioner. Respondent is entitled to recover PIP benefits to its insured driver as Petitioner was found at fault. Petitioner argues that the Arbitrator committed an error pursuant to CLRP 1411 by not applying

comparative negligence to Respondent's driver. However, "an arbitration award made after all parties have participated...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 vacated by the Court.

As Petitioner has failed to demonstrate the existence of any basis for vacatur of the award under the grounds set forth in CPLR 7511, the award is confirmed in its entirety.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED and that the petition of Petitioner Country-Wide Insurance Company is denied in its entirety; and it is further

ORDERED that Respondent's cross-motion is granted; and it is further

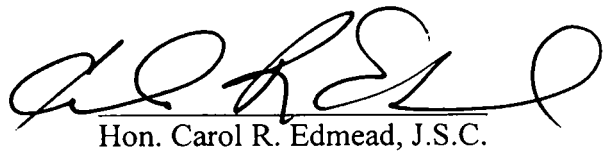
ORDERED AND ADJUGED that the award made by Arbitration Forums, Inc. to Respondent Hereford Insurance Company, dated August 9, 2018, is hereby confirmed; and it is further

ORDERED AND ADJUGED that Respondent Hereford Insurance Company is entitled to the sum of \$50,000 with costs and disbursements from Petitioner Country-Wide Insurance Company; and it is further

ORDERED that the Clerk shall enter judgment accordingly; and it is further

ORDERED that Respondent shall serve a copy of this order, along with notice of entry,
on all parties within 15 days of entry.

Dated: January 8, 2019



Hon. Carol R. Edmead, J.S.C.

**HON. CAROL R. EDMEAD
J.S.C.**