

**Matter of New York City Tr. Auth. v Accelerated
Surgical Ctr. of N. Jersey**

2019 NY Slip Op 30698(U)

March 19, 2019

Supreme Court, New York County

Docket Number: 450016/2018

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. JOHN J. KELLEY PART IAS MOTION 56EFM

Justice

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In the Matter of
NEW YORK CITY TRANSIT AUTHORITY,
Petitioner,

- v -

ACCELERATED SURGICAL CENTER OF NORTH JERSEY A/A/O
JAMES ESTIMOND,
Respondent.

INDEX NO.	450016/2018
MOTION DATE	01/03/2018
MOTION SEQ. NO.	001
DECISION, ORDER and JUDGMENT	

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 11
VACATE -
were read on this motion to/for DECISION/ORDER/JUDGMENT/AWARD.

The New York City Transit Authority (NYCTA) petitions pursuant to CPLR 7501(b)(1)(iii) to vacate an award of a master arbitrator dated October 13, 2017, and mailed October 17, 2017, that affirmed the award of a lower arbitrator dated July 25, 2017, awarding no-fault motorist benefits to Accelerated Surgical Center of North Jersey (ASCNJ), as assignee of James Estimond. ASCNJ submits no opposition. The court nonetheless denies the petition.

Estimond was allegedly injured in a motor vehicle accident on October 5, 2014. On April 9, 2015, ASCNJ performed a manipulation upon Estimond under anesthesia. Estimond assigned ASCNJ his right to recover no-fault benefits from NYCTA, which is a self-insurer. ASCNJ made claim upon NYCTA in the sum of \$6,700.00. NYCTA did not pay the claim, and ASCNJ demanded arbitration. In response, NYCTA denied coverage on the ground that it had never received a copy of ASCNJ's bill. An arbitration hearing was conducted on January 4, 2017, and June 26, 2017, at which ASCNJ reduced its demand from \$6,700.00 to \$4,249.12.

In a decision and award dated July 25, 2017, the arbitrator (hereinafter the lower arbitrator) found that ASCNY had submitted

“proof of mailing of the bill to [NYCTA] in the form of a USPS date-stamped receipt identifying the bill by Assignor’s name and date of service showing the item was mailed to the Respondent on May 16, 2015 within 45 days after the date the services were rendered. Applicant’s credible proof of timely mailing of the bill to the Respondent creates a rebuttable presumption that the addressee received the items mailed.”

Although NYCTA submitted an affidavit from a claims examiner, who asserted that NYCTA had never received the bill, the lower arbitrator concluded that “the affidavit fails to indicate in detail Respondent’s procedure as to the handling of incoming mail ensuring that claims are properly logged in and processed. The affidavit is no more than a mere denial of receipt which is not sufficient to rebut the presumption.” The lower arbitrator thus awarded \$4,249.12 to ASCNJ in full reimbursement of the claim.

NYCTA appealed the lower arbitrator’s award to a master arbitrator, arguing that the lower arbitrator erroneously relied upon documents establishing that ASCNJ mailed its bill to NYCTA on October 1, 2015, rather than May 16, 2015, as claimed by ASCNJ; NYCTA contended that the bill was thus untimely mailed. In a determination mailed October 17, 2017, the master arbitrator rejected NYCTA’s contention, explaining that

“If [NYCTA’s] assertion is correct, that issue should have been raised and/or argued by [NYCTA’s] counsel at the hearing and not in this forum. Since as indicated above this is not a hear[ing] de novo, [NYCTA’s] argument is outside the scope of a Master review and therefore is denied.”

The master arbitrator thus concluded that the lower arbitrator’s award was not irrational or arbitrary and capricious, that the findings as to whether ASCNJ’s bill was timely mailed had support in the record, and that the determination was not incorrect as a matter of law (see 11 NYCRR 65-4.10[a][4]).

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 Iernio v Blue Star Jets, LLC*, 140 AD3d 480 [1st Dept 2016]). Where, as here, arbitration is compulsory (see Insurance Law § 5105), closer judicial scrutiny of the arbitrator’s

determination is required under CPLR 7511(b) than that applicable to consensual arbitrations (see *Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214 [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]). To be upheld, an award in a compulsory arbitration proceeding must have evidentiary support and cannot be arbitrary and capricious (see *Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214 [1996]; *Matter of Furstenberg [Aetna Cas. & Sur. Co.–Allstate Ins. Co.]*, 49 NY2d 757 [1980]).

A medical provider that has accepted an assignment of no-fault benefits must submit a proof of claim for those benefits to a self-insurer no later than 45 days after the provider has rendered medical services (see 11 NYCRR 65-2.4, Conditions). The lower arbitrator's determination that ASCNJ timely submitted its bill to NYCTA within 45 days of rendering services to Estimond has support in the record and is not arbitrary and capricious, even if there is other evidence that might cast doubt on that determination.

“A master arbitrator has the authority to vacate or modify an arbitration award based upon a ground set forth in CPLR article 75 (see 11 NYCRR 65.19[a][1]). The power of the master arbitrator to review factual and procedural issues is limited to whether the arbitrator acted in a manner that was arbitrary and capricious, irrational or without a plausible basis. If the determination of the arbitrator is challenged based upon an alleged factual error, the master arbitrator must uphold the determination if it has a rational basis”

(*Liberty Mut. Ins. Co. v Spine Americare Med., P.C.*, 294 AD2d 574, 576 [2d Dept 2002] [some citations and internal quotation marks omitted]). Crucially, except where an insurer or self-insurer raises the defense of lack of coverage (see, e.g., *Central Gen. Hosp. v Chubb Group of Ins. Cos.*, 90 NY2d 195, 199 [1997]), the failure of a party to the lower arbitration to raise an issue before the lower arbitrator renders that issue unpreserved for appellate review on an appeal to a master arbitrator (see 11 NYCRR 65.18[c][6]; *Matter of Empire Mut. Ins. Co. v Jones*, 151 AD2d 754, 755 [2d Dept 1989]; see also *Matter of Allstate Ins. Co. v Espinal*, 205 AD2d 531 [2d Dept 1994]; *Matter of Reyes v New York City Tr. Auth.*, 2012 NY Slip Op 31192[U], 2012 NY Misc LEXIS 2121 [Sup Ct, N.Y. County, May 1, 2012]). Hence, the master

arbitrator properly rejected NYCTA's argument that ASCNJ untimely mailed its bill on October 1, 2015, as that contention was raised for the first time on the appeal to the master arbitrator.

Inasmuch as the master arbitrator did not make her own factual determinations, review alleged factual or procedural errors made in the course of the arbitration, weigh the evidence, or resolve credibility issues, she did not exceed her authority (see *Matter of Richardson v Prudential Prop. & Cas. Co.*, 230 AD2d 861 [2d Dept 1996]), and properly affirmed the lower arbitrator's award.

The grounds specified in CPLR 7511 are exclusive (see *Bernstein Family Ltd. Partnership v Sovereign Partners, L.P.*, 66 AD3d 201 [1st Dept 2009]) and it is a "well-established rule that an arbitrator's rulings, unlike a trial court's, are largely unreviewable" (*Matter of Falzone v New York Cent. Mut. Fire Ins. Co.*, 15 NY3d 530, 534 [2013]). Hence, the petition to vacate the master arbitrator's award must be denied. Pursuant to CPLR 7511(e), "upon the denial of a motion to vacate or modify" an award, the court "shall confirm the award."

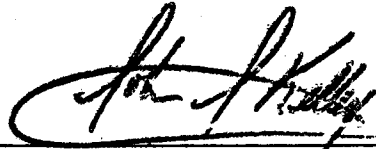
Accordingly, it is

ORDERED that the petition is denied, without opposition, and it is,

ADJUDGED that the master arbitration award mailed October 17, 2017, is confirmed.

This constitutes the Decision, Order, and Judgment of the court.

3/19/2019
DATE


JOHN J. KELLEY, J.S.C.
HON. JOHN J. KELLEY
J.S.C.

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

APPLICATION: GRANTED DENIED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER REFERENCE

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT