Matter of IDS Prop. Cas. Ins. Co. v Durant
2019 NY Slip Op 30729(U)
March 20, 2019
Supreme Court, New York County
Docket Number: 657238/2017
Judge: John J. Kelley
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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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INDEX NO. 657238/2017

In the Matter of

MOTION DATE 01/05/2018

IDS PROPERTY CASUALTY INSURANCE COMPANY

MOTION SEQ. NO. 001

Petitioner,

- v -

DECISION, ORDER, and JUDGMENT

CHRISTOPHER S. DURANT, M.D. A/A/O PAUL VILLON,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13, 14 were read on this motion to/for VACATE ARBITRATION AWARD.

IDS Property Casualty Insurance Company (IDS) petitions pursuant to CPLR 7501(b)(1)(iii) to vacate an award of a master arbitrator dated October 31, 2017, and mailed November 1, 2017, that affirmed the award of a lower arbitrator dated September 3, 2017, awarding no-fault motorist benefits to Christopher S. Durant, M.D., as assignee of Paul Villon (Paul). Durant submits no opposition. The petition is nonetheless denied.

Paul was allegedly injured in a motor vehicle accident on October 1, 2015, while operating a motor vehicle owned by his father, Jose Villon (Jose), and insured by IDS. On November 17, 2015, and December 15, 2015, Dr. Durant examined and treated Paul. Paul assigned Durant his right to recover no-fault benefits from IDS. Durant made claim upon IDS in the sum of $583.94. IDS disclaimed on the ground that Jose had made a material misrepresentation when applying for the subject policy, in that he told IDS that Paul was not a listed driver and was not permitted to drive the insured vehicle. IDS thus asserted that this misrepresentation vitiated coverage for Paul's accident. Durant demanded arbitration. An

arbitration hearing was conducted on August 10, 2017, at which Durant reduced his demand from $583.94 to $329.92.

In a decision and award dated September 3, 2017, the arbitrator (hereinafter the lower arbitrator) rejected IDS's defense, and awarded Durant the sum of $329.92. IDS appealed the award to a master arbitrator. In an award mailed on November 1, 2017, the master arbitrator affirmed the award of the lower arbitrator. IDS seeks to vacate both awards on the ground that Paul and Durant, as his assignee, are collaterally estopped from denying that the policy was secured by virtue of material misrepresentations. Specifically, IDS contends that, in an award dated May 29, 2017, and thus rendered several months before the lower arbitrator's award here, an arbitrator found that Jose had made material misrepresentations in applying to IDS for the subject insurance policy. That arbitrator thus rejected the claim of MiiSupply, LLC, against IDS to recover assigned no-fault benefits for medical supplies that it had provided to Paul in connection with the same accident that is the subject of this proceeding.

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 [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 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]).

The doctrine of collateral estoppel precludes a party "from relitigating in a subsequent action an issue clearly raised and decided against that party in a prior action" (*Ji Sun Jennifer Kim v Goldberg, Weprin, Finkel, Goldstein, LLP*, 120 AD3d 18, 23 [1st Dept 2014]; *see Hudson v Merrill Lynch & Co., Inc.*, 138 AD3d 511, 515 [1st Dept 2016]). To successfully invoke the doctrine, "the issue in the second action must be identical to an issue which was raised, necessarily decided and material in the first action," and "the party to be precluded must have had a full and fair opportunity to litigate the issue in the earlier action" (*Ji Sun Jennifer Kim v Goldberg, Weprin, Finkel, Goldstein, LLP*, 120 AD3d at 23). The doctrine of collateral estoppel is applicable to arbitration awards, including those rendered in disputes over no-fault benefits, and will bar relitigation of the same claim or issue in court (*see Matter of Ranni [Ross]*, 58 NY2d 715, 717 [1982]; *Matter of American Ins. Co. [Messinger–Aetna Cas. & Sur. Co.]*, 43 NY2d 184, 189-190 [1977]; *Monroe v Providence Washington Ins. Co.*, 126 AD2d 929 [3d Dept 1987]). Nonetheless, the doctrine will not necessarily bar a second arbitrator from reaching a different conclusion than that reached by an earlier arbitrator on the same facts. That is because

> "if a court makes an error and fails to properly apply collateral estoppel, the issue can be reviewed and corrected on appeal. By contrast, if an arbitrator erred in not applying collateral estoppel, the general limitation on judicial review of arbitral awards precludes a court from disturbing the decision unless the resulting arbitral award violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power."

(*Matter of Falzone v New York Cent. Mut. Ins. Co.*, 15 NY3d 530, 535 [2010]). In *Falzone*, the injured claimant secured a favorable arbitration award on her claim for no-fault benefits, with the

arbitrator finding that the subject accident caused her injuries. When she later arbitrated her claim for supplementary underinsured motorist (SUM) benefits against the same insurer in connection with the same accident, she contended that the insurer was collaterally estopped from denying causation. The arbitrator in the SUM arbitration rejected the claimant's argument, finding that the accident did not cause her injuries. In confirming the SUM arbitrator's contrary determination, the Court of Appeals explained that

> "It is not for us to decide whether the SUM arbitrator erred in not applying collateral estoppel (i.e., not giving preclusive effect to the no-fault arbitrator's determination on the issue of causation). Because the SUM arbitration award was not patently irrational or so egregious as to violate public policy, the instant SUM arbitration award (and whether the SUM arbitrator erred or exceeded his authority) is beyond this Court's review powers."

(id.). In other words, the Court left it up to the arbitrator whether or not to apply the doctrine of collateral estoppel, subject only to judicial review for the purpose of determining if the award was arbitrary and capricious or violative of a strong public policy.

Both Dr. Durant and MiiSupply are Paul's assignees. "Where an assignment grants the same rights and interests with regard to the claim to which the assignor had been entitled, with all of its infirmities, equities and defenses, the assignee stands in the shoes of the assignor" (*Warberg Opportunistic Trading Fund, L.P. v GeoResources, Inc.*, 151 AD3d 465, 472 [1st Dept 2017] [citation and internal quotation marks omitted]; *see Madison Liquidity Invs. 119, LLC v Griffith*, 57 AD3d 438, 440 [1st Dept 2008]). Thus, if collateral estoppel is applicable here, it would bar Durant's claim for benefits.

In the first instance, the court concludes that, in light of the record developed before the lower arbitrator, his determination that Jose did not secure the policy through material misrepresentations is not facially arbitrary and capricious.

The court further concludes that the lower arbitrator here was not constrained by the doctrine of collateral estoppel to find that Jose secured the subject policy through material misrepresentations. As with the causation determination in *Falzone*, that issue is a factually

intensive one. The mere fact that two different arbitrators came to different conclusions with respect to that issue does not render the later determination arbitrary and capricious. Nor was it irrational or violative of a strong public policy for the lower arbitrator to decline to give estoppel effect to the prior arbitrator's finding that Jose made material misrepresentations.

Inasmuch as the master arbitrator did not make his own factual determinations, review alleged factual or procedural errors made in the course of the arbitration, weigh the evidence, or resolve credibility issues, he did not exceed his 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 at 534). 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 November 1, 2017, is confirmed.

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

3/20/2019
DATE

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

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
CHECK IF APPROPRIATE:	[ ]	INCLUDES TRANSFER/REASSIGN		[ ]	FIDUCIARY APPOINTMENT	[ ]	REFERENCE