

Ameriprise Ins. Co. v Metro Radiology, P.C.
2019 NY Slip Op 31049(U)
April 10, 2019
Supreme Court, New York County
Docket Number: 650310/2019
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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 AMERIPRISE INSURANCE COMPANY,

Petitioner,

- against -

METRO RADIOLOGY, P.C. a/a/o SEBERT WILLIAMS,

Respondent.
 -----X

Index No.
 650310/2019

**DECISION
 and ORDER**

Mot. Seq. #001

HON. EILEEN A. RAKOWER, J.S.C.

Petitioner Ameriprise Insurance Company (“Petitioner”) brings this action, pursuant to Article 75 of the New York Civil Practice Laws and Rules (“Article 75”), seeking to vacate the No-Fault Arbitration Award of Master Arbitrator Alfred J. Weiner (“Master Arbitrator Weiner”) dated December 20, 2018 (the “Award”) upholding Arbitrator Nancy S. Linden’s (“Arbitrator Linden”) lower arbitrator ruling. There is no opposition.

Background/Factual Allegations

This proceeding arises out of a motor vehicle accident on August 26, 2015. After the accident Sebert Williams (“Mr. Williams”) received treatment. On October 13, 2015, Mr. Williams had an MRI of his lumbar spine and on October 19, 2015, Mr. Williams had an MRI of his right shoulder. On October 13, 2015, Petitioner’s attorney requested Mr. Williams to appear at an Examination Under Oath (“EUO”) scheduled for November 6, 2015. On October 24, 2015 and November 3, 2015, Petitioner alleges it received bills for service and Assignment of Benefits from Respondent Metro Radiology, P.C.’s (“Respondent”), seeking the reimbursement for the alleged services provided to Mr. Williams. Petitioner asserts that on November 6, 2015, Mr. Williams appeared for the EUO “which precipitated the need for Respondent’s EUO, as well as the EUOs of other treating healthcare providers”.

On November 20, 2015, Petitioner requested Respondent appear at an EUO scheduled for January 4, 2016. On November 25, 2015, Respondent’s counsel objected to the EUO. On December 1, 2015, Petitioner contends that Petitioner’s counsel responded to Respondent’s objection and provided a good faith basis for requesting Respondent’s EUO. On December 18, 2015, the EUO of Respondent was

rescheduled to January 25, 2016. Petitioner contends that Respondent failed to appear for the EUO on January 25, 2016. On January 27, 2016, Petitioner sent another request for Respondent to appear at an EUO for February 15, 2016. Petitioner contends that Respondent failed to appear for the EUO on February 15, 2016. On February 17, 2016, Petitioner sent an additional request for Respondent to appear at an EUO for March 4, 2016. On February 22, 2016, Respondent's counsel sent a correspondence to Petitioner objecting to the EUO. On February 29, 2016, Petitioner contends that Petitioner's counsel responded to Respondent's objection and provided a good faith basis for requesting Respondent's EUO.

Respondent initiated compulsory arbitration against Petitioner by filing with American Arbitration Association ("AAA") pursuant to Insurance Law § 5016. On September 25, 2018, Arbitrator Linden determined that the EUO requests were not properly issued because they failed to provide a good faith basis. Petitioner appealed Arbitrator Linden's determination, and the appeal was assigned to Master Arbitrator Weiner. On December 20, 2018, Master Arbitrator Weiner affirmed Arbitrator Linden's ruling.

Petitioner commenced this action on January 16, 2019 by filing a Petition as an Article 75 special proceeding. Respondent does not oppose.

Petitioner's Contentions

Petitioner asserts the a more relaxed standard applies when there is compulsory arbitration. Petitioner contends that under New York No-Fault regulations, Petitioner was allowed to request Respondent to appear for EUOs as a condition to coverage. Petitioner argues that Respondent is ineligible to receive no-fault reimbursements for treatment allegedly rendered as a result of the August 26, 2016 incident because it failed to meet this condition precedent to coverage. Moreover, Petitioner argues that an insurer is not required to provide a reasonable basis for a request for an EUO of an applicant for benefits. However, Petitioner contends that if the Court finds there is a requirement for Petitioner to provide a reasonable basis for a request for an EUO, Petitioner has provided a good faith basis in correspondences sent to Respondent's counsel dated December 1, 2015 and February 29, 2016.

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.

Where parties submit to “compulsory arbitration involving no-fault insurance, the standard of review is whether the award is supported by evidence or other basis in reason”. *Matter of Miller v Elrac, LLC*, 2019 NY Slip Op 01544 [1st Dept 2019]. “This standard has been interpreted to mean that the relevant test is whether the evidence is sufficient, as a matter of law, to support the determination of the arbitrator, is rational and is not arbitrary and capricious (*Matter of Petrofsky [Allstate Ins. Co.]*, 54 N.Y.2d 207, 211, 445 N.Y.S.2d 77, 429 N.E.2d 75 5 [1981]).” *Id.* “Although compulsory arbitration awards are subject to a broader scope of review than awards resulting from consensual arbitration, the scope of judicial review of such an arbitration award is still limited to whether the award is supported by the evidence or other basis in reason as appears in the record.” *Id.*

Further, 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.” *Petrofsky v. Allstate Insurance Company*, 54 NY2d 207 [1981]. Courts are required to uphold the determinations of the master arbitrator on questions of substantive law if there is a rational basis for the finding. *Liberty Mutual Insurance Company v. Spine Americare Medical, P.C.*, 294 AD2d 574 [2d Dept. 2002].

Discussion

Applying those standards to the Petition herein, the Court finds that Petitioner fails to set forth a basis for disturbing the Award. A review of the Award demonstrates that the Award was supported by the evidence as a matter of law and was not arbitrary and capricious. *Matter of Miller v Elrac, LLC*, 2019 NY Slip Op 01544 [1st Dept 2019]. The record shows that Arbitrator Linden weighed all relevant evidence and based upon the evidence presented, concluded that Petitioner’s EUO requests were non-compliant because Petitioner failed to provide a good faith basis. Master Arbitrator Weiner examined the entire record in rendering his decision to affirm the Award and determined that Award issued by Arbitrator Linden “was not arbitrary and capricious or contrary to law”. Petitioner therefore fails to meet its burden of demonstrating that the Award should be disturbed by the Court. Petitioner’s Petition to vacate the Award is therefore denied.

Wherefore it is hereby

ORDERED and **ADJUDGED** that the Petition is denied and the proceeding is dismissed and the Clerk is directed to enter judgment accordingly.

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

Dated: April 10, 2019



Eileen A. Rakower, J.S.C.