

**Country-Wide Ins. Co. v Cecile I Fray M.D., PLLC**

2019 NY Slip Op 32471(U)

August 21, 2019

Supreme Court, New York County

Docket Number: 652689/2019

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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Country-Wide Insurance Company,

Petitioner,

Index No.  
652689/2019

- against -

**DECISION  
and ORDER**

Cecile I Fray M.D., PLLC a/a/o Mario Martino,

Mot. Seq. 1

Respondent.

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

Petitioner Country-Wide Insurance (“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 Victor J. D’Ammora (“Master Arbitrator D’Ammora”) dated February 5, 2019 (the “Award”) which affirmed Arbitrator Bonnie Link’s (“Arbitrator Link”) lower arbitration award. Respondent Cecile I Fray M.D., PLLC a/a/o Mario Martino (“Respondent”) does not oppose.

Background/Factual Allegations

This proceeding arises out of a motor vehicle accident on December 4, 2017. After the accident Claimant Mario Martino (“Claimant”) alleges he received medical treatment from Respondent and Respondent submitted medical bills to Petitioner for reimbursement. Petitioner denied reimbursement because Petitioner’s insured driver claimed he was not involved in the accident on December 4, 2017. Petitioner asserts that no-fault benefits were unavailable because the Claimant “was not injured in the use or operation of a vehicle insured by” Petitioner. (Petitioner’s Petition at 4).

Respondent commenced arbitration before Arbitrator Link, seeking reimbursement of Claimant’s medical bills. On November 4, 2018, Arbitrator Link decided in Respondent’s favor and awarded Respondent \$3,402.65. Petitioner “then pursued Master Arbitration, on the grounds that the award of the No-Fault Arbitrator was arbitrary and capricious, and incorrect as a matter of law.” (Petitioner’s Petition

at 5). On February 5, 2019, Master Arbitrator D'Ammora affirmed Arbitrator Link's ruling.

Petitioner commenced this action on May 7, 2019 by filing a Petition as an Article 75 special proceeding. Respondent does not oppose.

### Petitioner's Contentions

Petitioner asserts that Arbitrator Link arbitrarily made factual assumptions, specifically stating that:

I find the insured's signed statement somewhat incredible because it does not elicit [*sic*] how she remembers her drive home from work on a specific night 6 weeks earlier and because, coincidentally she resides only about 3-4 blocks from where the ASSIGNOR states that he was struck. It is entirely possible that she deviated from her usual route because she was looking for a parking space. I find that the evidence is sufficient to shift the burden of proof to [Petitioner] to either take a sworn statement from the ASSIGNOR or establish in some other way whether or not his report of the accident was credible. Accordingly, the [Petitioner] has not sustained its burden of proof and Applicant's claim is granted.

(Petitioner's Petition at 7).

Petitioner argues that Arbitrator Link makes the assumption that the insured deviated from the usual route she takes after work to find a parking spot and then incorrectly shifts the burden to Petitioner to dispute. Moreover, Petitioner asserts that the police report does not provide any information on how the insured's vehicle was identified. Petitioner argues that Master Arbitrator D'Ammora's Award was arbitrary and capricious, and contrary to law by affirming Arbitrator Link's ruling.

### 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.* “With regard to fact and credibility findings, the Court should accept the arbitrator’s credibility determinations, even where there exists conflicting evidence and room for choice.” *Vieira-Suarez v. Syracuse City Sch. Dist.*, 93 N.Y.S.3d 628 [Sup. Ct, Onondaga County 2017], *aff’d*, 67 N.Y.S.3d 896 [4<sup>th</sup> Dept 2018], *leave to appeal denied*, 72 N.Y.S.3d 917 [4<sup>th</sup> Dept 2018], *and leave to appeal denied*, 109 N.E.3d 1156 [2018] (citation omitted).

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 Link weighed all relevant evidence and based upon the evidence presented, concluded that “the evidence is sufficient to shift the burden of proof to [Petitioner] to either take a sworn statement from the ASSIGNOR or establish in some other way whether or not his report of the accident was credible.” Arbitrator Link determined the credibility of the witnesses and the Court should not disrupt the arbitrator’s findings. *Vieira-Suarez v. Syracuse City Sch. Dist.*, 93 N.Y.S.3d 628 [Sup. Ct, Onondaga County 2017], *aff’d*, 67

N.Y.S.3d 896 [4<sup>th</sup> Dept 2018], *leave to appeal denied*, 72 N.Y.S.3d 917 [4<sup>th</sup> Dept 2018], *and leave to appeal denied*, 109 N.E.3d 1156 [2018]. Master Arbitrator D'Ammora examined the entire record in rendering his decision to affirm the Award and determined that "Arbitrator Link did an extensive analysis of the evidence, facts, and documents in this matter" and that the Award issued by Arbitrator Link "was not incorrect as a matter of law or arbitrary and capricious". 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: August 21, 2019

  
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Eileen A. Rakower, J.S.C.