MVAIC v Metro Pain Specialists, PC
2020 NY Slip Op 30808(U)
March 16, 2020
Supreme Court, New York County
Docket Number: 451841/2019
Judge: W. Franc Perry
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. W. FRANC PERRY** **PART** **IAS MOTION 23EFM**

Justice

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MVAIC

Plaintiff,

- v -

METRO PAIN SPECIALISTS, PC A/A/O HADI YAYA,

Defendant.

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INDEX NO. 451841/2019

MOTION DATE 12/02/2019

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 12, 13 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Petitioner seeks an order pursuant to CPLR 7511(b)(1)(iii) to vacate the decision of master arbitrator Richard B. Ancowitz, claiming that he affirmed the lower arbitrator's award which was rendered in excess of the appropriate fee schedule and issued after the policy limits were exhausted. The Petition has been submitted unopposed. Upon the foregoing documents, the Petition seeking to vacate the arbitration award is dismissed.

BACKGROUND

Hadi Yaya was involved in an accident involving a motor vehicle on May 5, 2017. Yaya received C/T facet injections on August 3 and 17, 2017 and sought reimbursement thereof, which formed the basis for the below arbitration. Notably, Yaya also received a C/T facet injection on September 29, 2017 but received reimbursement for that procedure.

The issue before lower arbitrator Stacy Presser was whether Yaya was entitled to recover for pain management services provided by Metro Pain Specialists, Respondent herein, as Petitioner denied such payments on the grounds that those two charges were medically unnecessary. Policy exhaustion also emerged as a secondary issue. (NYSCEF Doc No. 4 at 1.)

The lower arbitrator found that MVAIC's rationale for denying reimbursement for those two charges was not even "remotely sufficient in terms of establishing a factual basis and medical rationale" and noted the inconsistency between providing reimbursement for the September 29, 2017 while denying reimbursement for the August 3 and 17 charges. (*Id.* at 2.) The lower arbitrator also found Petitioner's policy exhaustion argument unpersuasive because the payment ledger was "broken down is [sic] such a way as to prevent my concluding, definitively, that the policy limits have been exhausted." (*Id.*) Metro Pain Specialists was ultimately awarded $2,536.87.

On review before master arbitrator Richard B. Ancowitz, Petitioner's sole contention was that the award should be vacated because the lower arbitrator failed to credit its policy exhaustion defense. (NYSCEF Doc No. 5.) However, the master arbitrator found that the lower arbitrator did not commit an error of law in granting the award because the evidence submitted by Petitioner in support of its policy exhaustion argument was insufficient as a matter of law. (*Id.* at 2.) Additionally, the master arbitrator noted that Petitioner failed to attach a copy of said evidence to the brief it submitted to him. (*Id.*)

Petitioner now seeks to vacate the arbitration awards, claiming that the lower arbitrator's award was "irrational, arbitrary, and incorrect as a matter of law," and that "the master arbitrator's decision was incorrect as a matter of law" because Petitioner had proven policy exhaustion. (NYSCEF Doc No. 3 at 2.) Respondent has not submitted its opposition or otherwise appeared.

STANDARD OF REVIEW/ANALYSIS

A party seeking to vacate an arbitration award carries a "heavy burden in establishing that the award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on an arbitrator's power under CPLR 7511(b)(1)." (*Scollar v Cece*, 28 AD 3d 317, 317

[1st Dept 2006] [internal quotation marks omitted], quoting *Matter of New York State Correctional Officers & Police Benevolent Assn. v State of New York*, 94 NY2d 321, 326 [1999].) An arbitration award must be upheld when the arbitrator "offers even a barely colorable justification for the outcome reached." (*Wien & Malkin LLP v Helmsley-Spear, Inc.*, 6 NY3d 471, 479 [2006], cert. dismissed 548 US 940 [2006], [citations omitted].)

When a court is asked to review an arbitrator's decision made in a compulsory no-fault arbitration proceeding, the court must affirm the award if there is evidentiary support and the award was neither arbitrary nor capricious. (*Motor Vehicle Accident Indemnification Corp. v Aetna Cas. & Sur.*, 89 NY2d 214, 220-222 [1996].) It is well settled that an "[a]rbitrary action is without sound basis in reason and is generally taken without regard to facts." (*Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974].) These standards govern both a master arbitrator's review of the original arbitration award and the court's review of the master arbitrator's award. (*Petrofsky v Allstate Ins. Co.*, 54 NY2d 207, 211 [1981].)

Petitioner has not sustained its burden of proof as there is no evidence before the Court that the award was arbitrary or capricious, nor is there proof that the award lacks evidentiary support. Contrary to Petitioner's claims, the arbitrators' decisions here, are not only in keeping with an arbitrator's power, within the meaning of CPLR 7511, the outcome reached is based upon sound reasoning and is supported by the voluminous factual record.

This Court finds that the lower arbitrator correctly analyzed the issues presented and the finding that MVAIC cannot assert policy exhaustion as a valid denial of the claim presented must be affirmed. Indeed, MVAIC failed to provide sufficient evidence to prove that the policy limits had been exhausted, and again failed to provide such evidence to the master arbitrator. (*See Nyack*

Hospital v General Motors Acceptance Corp., 8 NY3d 294 [2007]; *see also New York Presbyterian Hospital v Allstate Ins. Co.*, 12 AD3d 579, 580 [2nd Dept. 2004].)

In support of its Petition, Petitioner asserts the identical arguments that were rejected by the arbitrators and has simply failed to sustain its heavy burden to vacate the arbitration award. Petitioner argues that the arbitration awards should be vacated because the arbitrators exceeded their powers by awarding an amount in excess of the policy limits.

In affirming the lower arbitrator's award in its entirety, the master arbitrator noted the well settled grounds for review as set forth in *Matter of Allstate Ins. Co. v Keegan*, 201 AD2d 724 [2d Dept 1994]. The record demonstrates that the fee schedule defense was considered by the arbitrators and properly rejected because Petitioner failed to submit sufficient evidence to support its claim. (NYSCEF Doc No. 5 at 2.) The arbitrators did not exceed their powers when they rejected Petitioner's fee schedule defense. (*See Kingsbrook Jewish Medical Ctr. v Allstate Ins. Co.*, 61 AD3d 13 [2d Dept 2009]; *see also First Aid Occupational Therapy, PLLC v Country-Wide Ins. Co.*, 26 Misc. 3d 135(A), at *2 [App Term, 2d Dept 2010] [a carrier's fee schedule defense seeking reductions must be supported by competent and admissible medical proof].)

Given the standard of review and the analysis the master arbitrator undertook when affirming the award, this Court cannot say that there is "no justification for the outcome reached". (*See Wien & Malkin* LLP, 6 NY3d at 479.) To the contrary, the lower arbitrator's award and the master arbitrator's decision confirming the award in its entirety were made after an exhaustive review of the case file and the applicable case law, with a view toward upholding the strong public policy embedded in the no fault laws. Accordingly, it is hereby,

ADJUDGED that the Petition to vacate the Master Arbitrator's and the Lower Arbitrator's Awards is denied and the Petition is dismissed; and it is further

ORDERED that, pursuant to CPLR 7510, the Lower Arbitrator's Award and Master Arbitrator's Award regarding AAA Case Number 17-18-1089-7120 are confirmed.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

3/16/20
DATE

W. FRANC PERRY, 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