

Matter of Hertz Corp. v New York City Tr. Auth.

2020 NY Slip Op 31461(U)

May 21, 2020

Supreme Court, New York County

Docket Number: 153824/2019

Judge: Lisa A. Sokoloff

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 21

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In the Matter of the Application of

THE HERTZ CORPORATION,

Petitioner,

Index No. 153824/2019

-against-

Mot. Seq. 1

NEW YORK CITY TRANSIT AUTHORITY,

DECISION AND ORDER

Respondent.

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Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion:

Papers	Numbered	NYSCEF #
Petitioner's Petition/Affirmations/Memo of Law	<u>1</u>	1-7
Respondent's Affirmation in Opposition	<u>2</u>	8-10
Petitioner's Reply Affirmation	<u>3</u>	11

LISA A. SOKOLOFF, J.S.C.:

The verified petition seeks to vacate an arbitration award (the Award), dated February 14, 2019, pursuant to CPLR 7502 (a) and 7511 (b). The Award arises out of a collision between a car driven by James Blair (Blair), which was owned by petitioner The Hertz Corporation (Hertz), and a bus owned by respondent New York City Transit Authority (NYCTA). Hertz brought the arbitration proceeding pursuant to Insurance Law 5105, captioned, "Settlement between insurers," to recover from NYCTA no-fault benefits paid by Hertz's insurer to Blair in the amount of \$27,528.82.

Insurance Law section 5105 (a) provides for compulsory arbitration as the exclusive remedy for an insurer that has paid no-fault benefits to recover "the amount paid from the insurer of any other covered person to the extent that such other covered person would have been liable, but for the provisions of this article, to pay damages in an action at law" (*id.*). Section 5105

applies only if “at least one of the motor vehicles involved is a motor vehicle weighing more than six thousand five hundred pounds unloaded or is a motor vehicle used principally for the transportation of persons or property for hire” (*id.*).

In compulsory arbitration, due process requires closer judicial scrutiny than arbitration by agreement. An award “must have evidentiary support and cannot be arbitrary and capricious,” but it is still judicially reviewed under the rational basis standard (*Matter of Motor Vehicle Acc. Indem. Corp. v. Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223 (1996); *Cigna Prop. & Cas. v Liberty Mut. Ins. Co.*, 12 AD3d 198, 199 [1st Dept 2004]).

The accident occurred at the intersection of Hillside Avenue and Merrick Blvd. in Queens County, when the Hertz car, driven by Blair, was turning right at the traffic light from Hillside Avenue westbound onto Merrick Blvd. northbound, and collided with respondent’s bus, which was heading east on Hillside Avenue, before turning onto Merrick Blvd. northbound.

The arbitration award (the Award, Petition, exhibit B) denied Hertz any recovery, despite a jury award in Supreme Court, Queens County, to Blair of \$300,000 for past pain and suffering, and \$840,000 for future pain and suffering, and made no reduction of the verdict on the ground of comparative fault by Blair. The Award, under the heading, “summary of dispute,” described the issue in the arbitration as being whether Blair had a red or a green light when he made the right turn, and whether the bus had a red or green light when it turned left. The Award states that Hertz did not prove that the NYCTA was at fault for this loss. The arbitrator states that she based the Award on the police report, which cites an independent witness who stated that NYCTA had a green light and Blair had a red light, and that Blair was cited in the police report “for Driver inattention and Traffic control disregarded [sic]” (*id.*).

NYCTA also submitted a supervisors' report of investigation and the report states that the driver was making a left turn with a green arrow, checked for pedestrians, and proceeded to turn, and was struck by The Respondent NYCTA also submitted a witness statement the witness stated was also making a left turn and he witnessed that the green arrow indicator was green, and he saw the Applicant hit the NYCTA bus.

The Award states further that an additional basis for the decision was photographs of the vehicles, which show heavy damage to Hertz's vehicle on the driver's side fender and front bumper corner, while damage to the bus is on the front passenger side corner bumper, indicating that the Hertz vehicle struck the bus, which is consistent with the statement of the bus driver.

The Award notes that there was an excerpt submitted by Hertz from the Queens Supreme Court proceedings on the damages portion of the trial, but nothing on liability. The arbitrator did not invoke collateral estoppel to rule that Blair was not negligent based on the Queens County jury award, and made no explanation for not doing so, other than noting that "there was nothing submitted regarding the liability portion of the trial" (Petition, exhibit B).

Hertz filed a supplemental petition to vacate the Award, which annexes two exhibits, neither of which had been submitted to the arbitrator. First, exhibit D is the judgment filed in Queens County on February 25, 2019, which states that the jury "found plaintiff 0% at fault and defendants 100% at fault, and finding that the defendants' negligence was a substantial factor in causing the plaintiff's injuries" (*id.*). Exhibit E, is the court's order denying Hertz's motion to set aside the verdict, which states:

"[o]n the issue of liability, the jury voted unanimously that defendants Deona Coleman and [NYCTA] were negligent and that their negligence was a substantial factor in causing the

accident. The jury also rendered an unanimous verdict that Blair was negligent and a 5-1 verdict that his negligence was not a substantial factor in causing the accident.”

(Petition, exhibit E).

Neither exhibit D nor exhibit E were submitted to the arbitrator, and, therefore, cannot be considered by this court on the petition (*see Matter of Campbell v New York City Tr. Auth.*, 32 AD3d 350, 352 [1st Dept 2006]) (holding that the court exceeded its authority by conducting its own review of the evidence, including evidence that was not before the arbitrator). A court may not rely on newly discovered evidence as a basis for vacating an arbitrator's award (*see Matter of Meehan v Nassau Community Coll.*, 242 AD2d 155, 157 [2d Dept 1998]; *Matter of Hirsch Constr. Corp. [Cooper]*, 181 AD2d 52, 55 [1st Dept 1992]).

Hertz's petition is denied. As the Court of Appeals holds:

“[I]t is well settled that a court may vacate an arbitration award only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power. Even where an arbitrator has made an error of law or fact, courts generally may not disturb the arbitrator's decision.... Here, petitioner's claim—that the arbitrator erred in failing to apply collateral estoppel to preclude litigation of the causation issue in the SUM arbitration—falls squarely within the category of claims of legal error courts generally cannot review” (*Matter of Falzone (New York Cent. Mut. Fire Ins. Co.)*, 15 NY3d 530, 534 [2010] [internal citations omitted]).

The Award is rationally based on substantial evidence, and is not arbitrary or capricious (*Cigna Prop. & Cas. v Liberty Mut. Ins. Co.*, 12 AD3d 198, 199 [1st Dept 2004]). The arbitrator did not exceed her authority by not applying collateral estoppel to preclude the issue of whether

Blair was negligent, based on the record before her, and Hertz has not identified any strong public policy or enumerated limitation on the arbitrator's power that is violated.

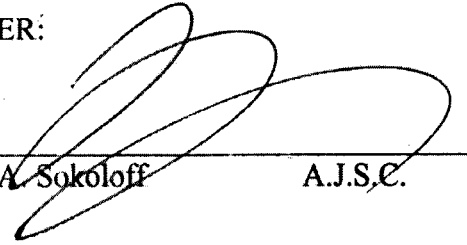
Dated:

Accordingly, it is

ORDERED that the petition is denied.

Dated: May 21, 2020

ENTER:



Lisa A. Sokoloff A.J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED		<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	REFERENCE