

**Country-Wide Ins. Co. v Essential Acupuncture PC**

2020 NY Slip Op 32805(U)

August 26, 2020

Supreme Court, New York County

Docket Number: 655751/2019

Judge: Melissa A. Crane

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK: IAS PART 15

-----X

COUNTRY-WIDE INSURANCE COMPANY,

Petitioner,

-against-

Index No. 655751/2019

Motion Sequence No. 001

ESSENTIAL ACUPUNCTURE PC

a/a/o DOMINGO CRUZ,

Respondent.

-----X

**HON. MELISSA A. CRANE, J.S.C.:**

Petitioner Country-Wide Insurance Company (Country-Wide) is the insurer of a vehicle in which respondent Domingo Cruz (Cruz) was a passenger when it was struck by a second vehicle in an automobile accident on November 14, 2015. *See* petition, ¶¶ 3-6. After the accident, Cruz sought treatment from respondent Essential Acupuncture PC (Essential Acupuncture), for which he was billed. *Id.* The charges contained on those bills were submitted to arbitration on March 27, 2019. *Id.*, ¶ 7. On, March 30, 2019, arbitrator Hersh Jakubowitz issued a determination that awarded Essential Acupuncture a judgment against Country-Wide for Cruz’s acupuncture treatment bills (the arbitrator’s award). *Id.*, ¶ 8; exhibit A. Dissatisfied, Country-Wide appealed the arbitrator’s award through the master arbitration process. *Id.*, ¶¶ 9-

10. On July 10, 2019, master arbitrator Victor J. D'Ammora issued a decision that upheld the arbitrator's award (the master arbitrator's decision). *Id.*, ¶ 11; exhibit D. Country-Wide then commenced this action on September 30, 2019 to challenge the master arbitrator's decision pursuant to CPLR 7511 (motion sequence number 001). *Id.*, ¶ 12. Neither Essential Acupuncture nor Cruz submitted any opposition to Country-Wide's petition, and their time to do so has expired.

Country-Wide first asserts that this action is timely because it filed the instant petition on September 30, 2019, which is within the 90-day limitations period specified in CPLR 7511 that began to run when the master arbitrator's decision was issued on July 10, 2019. *See* petition, ¶¶ 13-14; exhibit D. The court finds that the statute speaks for itself, and agrees that this action is timely because the limitations period did not expire until October 10, 2019, and Country-Wide commenced it beforehand.

Country-Wide next asserts that "the lower arbitrator's award was irrational, not supported by the evidence, and arbitrary and capricious," and that "the Master Arbitrator erred in affirming the award." *See* petition, ¶¶ 13-17. Country-Wide particularly argues that "the Arbitrators exceeded their authority in directing payment of . . . \$556.60 [in treatment charges by Essential Acupuncture], as the award was in excess of the insured's \$50,000 policy limits, as evidenced by the Explanation of Benefits." *Id.*, ¶¶ 18-22. Country-Wide supports this argument by citing the Court of Appeals decision in *Matter of Brijmohan v State Farm Ins. Co.* (92 NY2d 821 [1998]), a case that involved an insurance policy with an "arbitration clause . . . [that] incorporated by reference the rules of the American Arbitration Association, which in turn provided that the arbitrator 'shall render a decision . . . not in excess of the applicable policy limits,'" and that held that "the arbitrator's award was beyond the policy limits and therefore in excess of the arbitrator's

powers.” 92 NY2d at 822-823. As was previously indicated, respondents did not submit any answering or other opposition papers to challenge Country-Wide's argument.

The relevant portion of CPLR 7511 provides as follows:

“The [arbitrator’s] award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that party were prejudiced by:

\* \* \*

(iii) an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made;”

CPLR 7511 (b) (1) (iii). The Appellate Division, First Department, recently reiterated the rules that:

“Generally, courts will not set aside an award where ‘there is a rational view to support it.’ *Country-Wide Ins. Co. v May*, 282 AD2d 298, 298 (1<sup>st</sup> Dept. 2001]; *see also Matter of Carty v Nationwide Ins. Co.*, 212 AD2d 462 (1<sup>st</sup> Dept 1995]. However, in addition to irrationality, an award may be vacated if the arbitrator exceeds his or her power (*see* CPLR 7511[b][1][iii]). An arbitrator exceeds his/her power if the award is ‘beyond the policy limits.’ *Matter of Brijmohan v State Farm Ins. Co.*, 92 NY2d 821, 823 (1998); *see also e.g., Countrywide Ins. Co. v Sawh*, 272 AD2d 245 (1<sup>st</sup> Dept. 2000).”

*Matter of Ameriprise Ins. Co. v Kensington Radiology Group, P.C.*, 179 AD3d 563, 564 (1<sup>st</sup> Dept 2020). Here, the arbitrator’s March 30, 2019 award plainly acknowledged that the limits of the \$50,000.00 policy held by Country-Wide's insured driver had been met, but nevertheless included Essential Acupuncture’s \$556.60 bill to Cruz in the award. *See* petition, exhibit A. The master arbitrator’s July 10, 2019 decision also acknowledged Country-Wide's “exhaustion argument,” but nevertheless upheld the arbitrator’s award of \$556.60 in excess of the \$50,000.00 policy. *Id.*, exhibit D. As the above case law makes clear, this was an improper act that exceeded the respective arbitrators’ authority, and, as such, requires the vacatur of their

respective awards pursuant to CPLR 7511 (b) (1) (iii). Accordingly, for the foregoing reasons, it is

ADJUDGED that the petition, pursuant to CPLR 7511, of petitioner Country-Wide Insurance Company (motion sequence number 001) is granted without opposition, and the arbitration award that was rendered in favor of said petitioner and against respondent Essential Acupuncture PC a/a/o Domingo Cruz on July 10, 2019 is vacated.

Dated:

New York, New York

August 26, 2020

ENTER:

HON. MELISSA A. CRANE  
J.S.C.



Hon Melissa A. Crane, J.S.C.