

**Country-Wide Ins. Co. v Iconic Wellness Surgical
Servs., LLC**

2020 NY Slip Op 33678(U)

November 2, 2020

Supreme Court, New York County

Docket Number: 652723/2020

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER

PART 6

Justice

COUNTRY-WIDE INSURANCE COMPANY,

INDEX NO. 652723/2020

Petitioner,

MOTION DATE

- against-

MOTION SEQ. NO. 1

MOTION CAL. NO.

**ICONIC WELLNESS SURGICAL SERVICES, LLC
a/a/o PELAGIA MORENO,**

Respondent(s).

The following papers, numbered 1 to ____ were read on this motion for/to

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

■

Answer – Affidavits – Exhibits _____

■

Replying Affidavits

■

Cross-Motion: Yes X No

Petitioner Country-Wide Insurance Company (“CWI”) submits a Petition seeking an Order pursuant to CPLR §7511(b)(1)(i), CPLR §7511(b)(1)(iii) and CPLR §7511(b)(1)(iv) vacating a lower Arbitrator’s Award dated October 15, 2019 and a Master Arbitration Award dated January 8, 2020, “on the grounds that the lower Arbitrator exceeded his/her authority, or so imperfectly executed it, that a final and definite award upon the subject matter submitted was not made, the Master Arbitrator failed to follow the procedure of Article 75, and the Master Arbitrator erred in affirming the award.” Respondent Iconic Wellness Surgical Services, LLC a/a/o Pelagia Moreno (“Iconic”) opposes the Petition.

Background

This matter arises from an underlying accident that occurred on February 19, 2017 involving a vehicle registered in New York State and insured by CWI. Pelagia Moreno (“Claimant”) was the driver of a vehicle insured by CWI that was struck by another vehicle. Following the accident, Claimant allegedly received healthcare services from Iconic. Iconic submitted medical bills for reimbursement

for the physician's assistant's fee for right shoulder arthroscopic surgery provided to Claimant.

This matter proceeded to arbitration on September 16, 2019, before Arbitrator Steven Celauro (hereinafter "the lower Arbitrator"). CWI claimed that Claimant's right shoulder arthroscopic surgery was not medically necessary. CWI submitted the peer review of Dr. Granatir who "opine[d] that the causal relationship between the subjective complaints of shoulder pain and the accident cannot be established" and "the surgery was not medically necessary." Iconic submitted the rebuttal report of Dr. Berkowitz who "opined that the surgery was medically necessary." The lower Arbitrator reviewed both reports and held that Iconic "has established its prima facie case, [CWI] has failed to rebut the presumption of causation, and has also failed to establish that the surgery was not medically necessary." The lower Arbitrator further stated, "Even if [he] found arguendo that the [CWI's] peer review was sufficient to shift the burden ... the Applicant [Iconic] has successfully refuted it and has established the medical necessity for the surgery by a fair preponderance of the evidence."

CWI appealed the lower Arbitrator's decision to the Master Arbitrator. The Master Arbitrator held that "[t]he arbitrator's determination was supported by the rebuttal and the submitted medical records, and was not arbitrary, capricious and/or incorrect as a matter of law."

In the Petition, CWI alleges, "The lower arbitrator's decision is arbitrary, capricious, and incorrect as a matter of law because there is no ruling on the Rebuttal that would indicate it surmounts the prima facie findings of the Peer Review-- that the injuries were neither caused by the underlying accident and the medical services provided therein were not medically necessary."

Legal Standard

Pursuant to CPLR § 7511(b), the grounds for vacating an arbitration award are "(i) corruption, fraud or misconduct in procuring the award; ... (ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; ... (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; [and] (iv) failure to follow the procedure

of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection.”

Generally, an arbitration award made after all parties have participated will not be overturned merely because the arbitrator committed an error of fact or of law. *Motor Vehicle Acc. Indemnification Corp. v. Aetna Casualty & Surety Co.*, 89 NY2d 214, 223 (1996). “[W]here the arbitration is pursuant to the voluntary agreement of the parties, in the absence of proof of fraud, corruption, or other misconduct, the arbitrator’s determination on issues of law as well as fact is conclusive.” *Id.*

To establish that an arbitrator has “exceeded his power” under CPLR §7511, a party must show 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). *New York City Tr. Auth. v Transp. Workers’ Union of Am., Local 100, AFL-CIO*, 6 NY3d 332, 336 [2005].

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.” *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 NYS3d 628 [Sup. Ct, Onondaga County 2017], *aff’d*, 67 NYS3d 896 [4th Dept 2018], *leave to appeal denied*, 72 NYS3d 917 [4th¹ Dept 2018], *and leave to appeal denied*, 109 NE3d 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 Ins. Co.*, 54 NY2d 207, 212 [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 Ins. Co. v. Spine Americare Medical, P.C.*, 294 AD2d 574, 577 [2d Dept. 2002].

Pursuant to CPLR §7511(e), “upon the denial of a motion to vacate or modify” an award, the court “shall confirm the award.”

Discussion

CWI fails to set forth a basis for disturbing the lower Arbitrator’s Award. The lower Arbitrator reviewed the competing affidavits submitted by the parties and held CWI failed to satisfy its burden of showing that the medical services provided were not medically necessary. The Court finds no basis to disturb this finding. “[A]ssessment of the evidence presented at an arbitration proceeding is the arbitrator’s function rather than that of the court.” *Fitzgerald v Fahnestock & Co., Inc.*, 48 AD3d 246, 247 [1st Dept 2008], quoting *Peckerman v D & D Assocs.*, 165 AD2d 289, 296 [1st Dept 1991]). Further, the Master Arbitrator correctly determined that the lower Arbitrator did not exceed his powers and determined that the decision was rational and neither arbitrary, capricious nor incorrect as a matter of law. *Petrofsky*, 54 NY2d at 209.

Based upon the foregoing, the Petition for an order vacating the lower Arbitrator’s Award dated October 15, 2019 and affirmed January 8, 2020 by a Master Arbitrator is denied.

The Award in the matter of *Iconic Wellness Surgical Services, LLC/Pelagia Moreno v. Country-Wide Insurance Group*, AAA Case 17-18-1100-1764, is hereby confirmed in all respects.

Wherefore, it is hereby

ORDERED that the Petition is denied and this proceeding is dismissed; and it is further

ORDERED that the arbitration award in the matter of *Iconic Wellness Surgical Services, LLC/Pelagia Moreno v. Country-Wide Insurance Group*, AAA Case 17-18-1100-1764, is hereby confirmed in all respects; and it is further

ORDERED that the Clerk shall enter a judgment in favor of Respondent Iconic Wellness Surgical Services, LLC a/a/o Pelagia Moreno against Petitioner Country-Wide Insurance Company as follows: a) \$2,177.97, plus interest from June 25, 2020 at the rate of two per cent (2%) per month; together with b) an attorney’s fee to be calculated as: “After calculating the sum total of the first-party benefits awarded in this arbitration plus the interest thereon, Respondent shall pay Applicant an attorney’s fee equal to 20% of that sum total, subject to a minimum of \$60 and a maximum of \$850. However, if the benefits and interest awarded thereon is equal to or less than the Respondent’s written offer during the conciliation process, the attorney's fee shall be based upon the provisions of 11 NYCRR 65-4.6 [b]” together with c) forty dollars (\$40) to reimburse Respondent for the fees paid to AAA.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

ENTER: 
J.S.C.

HON. EILEEN A. RAKOWER

Dated: November 2, 2020

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION