

Country-Wide Ins. Co. v Aris Diagnostic Med. PLLC
2020 NY Slip Op 34141(U)
December 10, 2020
Supreme Court, New York County
Docket Number: 654532/2019
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES

PART IAS MOTION 59EFM

Justice

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INDEX NO. 654532/2019

COUNTRY-WIDE INSURANCE COMPANY,

MOTION DATE 02/27/2020

Petitioner,

MOTION SEQ. NO. 001

- v -

ARIS DIAGNOSTIC MEDICAL PLLC A/A/O JOSEFA
ADAMES, LDU THERAPY INC. A/A/O JOSEFA ADAMES,
and MOTOR VEHICLE ACCIDENT INDEMNIFICATION
CORPORATION,

DECISION + ORDER ON
MOTION

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 24, 31, 32, 33, 34,
35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55

were read on this motion to/for

VACATE - DECISION/ORDER/JUDGMENT/AWARD.

ORDER

Upon the foregoing documents, it is

ORDERED that the petition of Country-Wide Insurance Company
is denied; and it is further

ORDERED that the cross petition of respondent Motor Vehicle
Accident Indemnification Corporation is granted; and it is
further

ORDERED that the cross petition of respondents Aris
Diagnostic Medical PLLC and LDU Therapy Inc. is granted; and it
is further

ORDERED AND ADJUDGED that the Master Arbitration Awards in
the matters entitled Aris Diagnostic Medical PLLC a/a/o Josefa
Adames v Country-Wide Insurance Company (AAA Case No. 99-18-

1107-7399) and LDU Therapy Inc. a/a/o Josefa Adames v Country-Wide Insurance Company (AAA Case No. 99-18-1107-99-18-1107-7399), are confirmed; and it is further

ADJUDGED that respondent LDU Therapy, Inc., having an address at _____, do recover from petitioner Country-Wide Insurance Company, having an address at _____, the amount of \$ 2,666.000, plus interest at the rate of two percent per month from the date of October 9, 2018, as computed by the Clerk in the amount of \$ _____, together with costs and disbursements in the amount of \$ _____ as taxed by the Clerk, for the total amount of \$ _____, and that the petitioner have execution therefor; and it is further

ADJUDGED that respondent Aris Diagnostic Medical PLLC, having an address at _____, do recover from petitioner Country-Wide Insurance Company, having an address at _____, the amount of \$ 3,549.07, plus interest at the rate of two percent per month from the date of October 6, 2018, as computed by the Clerk in the amount of \$ _____, together with costs and disbursements in the amount of \$ _____ as taxed by the Clerk, for the total amount of \$ _____, and that the petitioner have execution therefor; and it is further

ORDERED that the claims for attorneys fees' and costs of the cross-petitioners are severed and shall continue; and it is further

ORDERED that such claims are referred to a Judicial Hearing Officer ("JHO") or Special Referee, which JHO or Special Referee shall be designated to hear and report to this Court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose: the issue of the amount due respondents Aris Diagnostic Medical PLLC and LDU Therapy Inc. for attorneys' fees and costs; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119M, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon which the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link under "Courthouse Procedures"), shall assign this matter to an available JHO/Special Referee to hear and report as specified above; and it is further

ORDERED that counsel shall immediately consult one another, if applicable, and counsel for respondent shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or email, an Information Sheet (which can be accessed at the "References" link on the court's website)

containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further,

ORDERED that the counsel for respondents LDU Therapy Inc. and Aris Diagnostic Medical PLLC shall serve a proposed accounting of attorneys' fees within 28 days from the date of service of this order with notice of entry and the counsel for petitioner shall serve objections to the proposed accounting within 30 days from service of respondents' papers, and the foregoing papers shall be filed with the Special Referee Clerk at least one day prior to the original appearance date in Part SRP fixed by the Clerk as set forth above; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referee's Part in accordance with the Rules of that Part, and that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320[a]) (inter alia, the proceeding will be recorded by a court reporter, the rules of evidence shall apply) and, except as otherwise directed by the assigned

JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts.

DECISION

In this special proceeding, petitioner Country-Wide Insurance Company (Country-Wide) seeks an order: (1) pursuant to CPLR 7511 (b) (1) (i), vacating the master arbitration award dated July 18, 2019 and the no-fault arbitrator's award dated April 3, 2019 in the no-fault arbitration entitled Aris Diagnostic Medical PLLC a/a/o Josefa Adames v Country-Wide Insurance Company, AAA Case No. 99-18-1107-7399, upon the ground that the no-fault arbitrator's failure to consider pertinent and material evidence submitted by petitioner constituted prejudicial misconduct which arbitrarily, capriciously and irrationally created no-fault insurance coverage by petitioner where none otherwise exists; and (2) pursuant to CPLR 7511 (b) (1) (i), vacating the master arbitration award dated July 18, 2019 and the no-fault arbitrator's award dated April 3, 2019 in the matter entitled LDU Therapy Inc. a/a/o Josefa Adames v Country-Wide Insurance Company, AAA Case No. 99-18-1107-99-18-

1107-7399, upon the ground that the no-fault arbitrator's failure to consider pertinent and material evidence submitted by petitioner constituted prejudicial misconduct which arbitrarily, capriciously and irrationally created insurance coverage by petitioner where none otherwise existed; and (3) remanding both matters to the American Arbitration Association for de novo no-fault arbitration hearings.

Respondent Motor Vehicle Accident Indemnification Corporation (MVIAC) opposes the petition and cross-petitions the court for an order, pursuant to CPLR 7511, confirming the Master Arbitrator's awards dated July 18, 2019, with date of mailing July 19, 2019, with AAA Assessment Numbers 99-18-1107-8819 and 99-18-1107-7399, and the Lower Arbitrator's Awards dated April 3, 2019, with AAA Case Numbers 17-18-1107-7399 and 17-18-1107-8819, in the above captioned matter, and entering Judgment on behalf of respondent and dismissing the claim with prejudice.

Likewise, respondents LDU Therapy Inc. (LDU) and Aris Diagnostic Medical PLLC (Aris) oppose the petition and cross-petition the court for an order: denying petitioner's application to vacate a no-fault arbitration; confirming the no-fault arbitration awards pursuant to CPLR 7510 and entering judgment thereon pursuant to CPLR 7514; and, for attorney's fees pursuant to 11 NYCRR 65-4.10 (j) (4).

Background

Country-Wide issued nonparty Maria Scott a personal motor vehicle insurance policy, No. ES-9702624-16, in which, among other things, no-fault coverage was provided on a 2005 Dodge Ram, a 1998 Chrysler Town & Country minivan, a BMW and a Toyota Sienna in accordance with article 51 of the Insurance Law for the period March 8, 2016 to February 25, 2017 (the Policy) (petition, exhibit A).

On September 25, 2016, nonparty Josefa Adames was involved in a motor vehicle accident, where she was struck while she was walking across Fountain Avenue at its intersection with Dumont Avenue in Brooklyn. The driver of the vehicle fled the scene of the accident. The police were called and a report was taken. The report states:

"At TPO C/V states as she was crossing Fountain Avenue an unknown black SUV with partial New York TLC Plate T458 was making a left turn onto Fountain from Dumont when driver C/V and continued N/B on Fountain Avenue never coming to a stop. Multiple cameras at public school 370 Fountain Avenue".

Adames submitted an application for no-fault benefits, dated October 21, 2016, to Country-Wide, wherein she described the accident as "crossing street & car hit me" and that she was not a "member of our policyholder's household." (petition, exhibit D). As a result of the accident, Adames sought medical treatment for the injuries she suffered from Aris and LDU. Both Aris and LDU submitted to Country-Wide no-fault bills for

medical treatment they each provided to Adames for injuries she suffered in the underlying accident in the aggregate amount of \$6,215.07.

Country-Wide's Denial of Claims

By denial of claim dated January 19, 2017 (Exhibit "F"), Country-Wide timely served a global denial of no-fault benefits upon the ground that Ms. Adames':

" . . . injuries did not result from use or operation of a motor vehicle insured with this company. Claimant should seek benefits from the insurer of such vehicle they were occupying, if any. Injuries are a result of a non-covered automobile loss. The claimant is not an 'eligible injured person' under this policy"
(petition, exhibit F).

By denial of claim dated March 28, 2017, Country-Wide denied LDU's no-fault bills for medical treatment of Ms. Adames for the same reason. (petition, exhibit G). By denial dated February 13, 2017, Country-Wide also denied the no-fault claims of Aris Diagnostic upon the same ground stating that Ms. Adames':

"injuries did not result from use or operation of a motor vehicle insured with this company. Claimant should seek benefits from the insurer of such vehicle they were occupying, if any. Injuries are a result of a non-covered automobile loss. The claimant is not an 'eligible injured person' under this policy"
(petition, exhibit H).

In response to Country-Wide's aforesaid denials of claim, Aris and LDU submitted their aforesaid no-fault bills to MVAIC

for payment. By letters dated October 12, 2018 and October 15, 2018, MVAIC denied the claims upon the ground that there is "available coverage with Country-Wide Insurance Co. under Claim number 000321013002" (petition, exhibit I).

The AAA Arbitrations

Both Aris and LDU demanded arbitration through the American Arbitration Association (AAA). Country-Wide's defense to both Aris and LDU's claims was predicated on the statement in the police report that the accident was a hit-and-run by an unknown vehicle and that the "partial plate" number recorded was for a commercial Taxi & Limousine Commission ("TLC") license plate, which is inconsistent with the personal auto policy which Country-Wide issued to Maria Scott. Country-Wide submitted the police report taken at the time of the accident, a declaration statement of the Policy and Scott's insurance ID card in support of its defense.

MVAIC submitted to the arbitrator Country-Wide's explanation of benefits (EOB), dated October 17, 2018, which stated that Country-Wide had paid, under claim no. 000321013002, a no-fault bill in the sum of \$664.15 submitted by Good Point Acupuncture for medical services provided to Ms. Adames from October 17, 2016 to November 4, 2016 (before the dates of medical service provided by Aris Diagnostic and LDU Therapy in dispute herein) for the same accident (petition, exhibit L).

The description in the EOB for services was the statement "NF MEDICAL AT RECONCILIATION." (id.).

MVAIC argued that Country-Wide's aforesaid payment of Good Point Acupuncture's bill ipso facto created no-fault coverage. At the arbitration hearing, Country-Wide explained that the payment reflected on the EOB did not create no-fault coverage under Country-Wide's personal auto policy issued to Maria Scott because the explanation in the EOB of "NF MEDICAL AT RECONCILIATION" meant that Country-Wide's payment was in connection with a bulk settlement of a large number of then pending AAA cases without regard to the actual merits of the claim as an accommodation to the AAA which was severely backlogged at the time.

A hearing was held on December 10, 2018 before Arbitrator Linda Filosa to establish the issue of coverage for Adames in connection with the date of loss. At the close of the hearing, Arbitrator Filosa permitted Country-Wide time to file a post-hearing brief concerning the payment Country-Wide issued to Good Point, and how or why it does not create coverage. The brief was due to be filed by January 10, 2019. Respondent MVAIC was given until February 10, 2019 to submit a response; however, Country-Wide failed to submit a post-hearing brief.

On March 4, 2019, a second hearing was held before Arbitrator Filosa. At the hearing, Country-Wide did not raise any arguments regarding the EOB submitted by MVAIC.

The Arbitration Awards

By awards dated April 3, 2019, Arbitrator Filosa, in both the Aris and LDU arbitrations awarded Aris the sum of \$3,549.07, and LDU the sum of \$2,666.00 (petition, exhibits M & N). In each award, Arbitrator Filosa made the following findings: "[t]he sole evidence" submitted by Country-Wide was the police report; the police report indicates that the injured party was a victim of a "hit and run" and that a "partial plate was taken"; and Country-Wide failed to submit a post-hearing brief to support its defense; failed to properly rebut MVAIC's argument that the aforesaid payment created coverage; and failed to persuade the arbitrator that no coverage existed (id.).

The Master Arbitration Awards

Country-Wide timely appealed both awards rendered by Arbitrator Filosa to a master arbitrator. In a letter brief dated May 20, 2019, Country-Wide argued that that although Arbitrator Filosa in each award acknowledged the statement in the police report that the accident was a hit-and-run by an unknown vehicle and that a "partial plate" number had been recorded, the Arbitrator irrationally ignored the statement in the same police report that the "partial plate" number was for a

commercial TLC license plate which is inconsistent with the personal auto policy which Country-Wide issued to Scott (petition, exhibit O).

In addition, Country-Wide asserted that the Arbitrator's conclusion in each case, i.e., that "[t]he sole evidence submitted by [Country-Wide] was a police report," was patently wrong; that it showed that the no-fault arbitrator failed to consider the aforesaid declaration sheet for the Policy and insurance ID card for Country-Wide's personal auto policy issued to Scott; that the Arbitrator's failure to consider pertinent and material evidence constituted prejudicial misconduct which irrationally created no-fault insurance coverage by Country-Wide where none otherwise existed; and that both arbitration awards should be vacated and the matters remanded for new arbitration hearing.

By awards dated July 18, 2019, the Master Arbitrator affirmed Arbitrator Filosa's awards dated April 3, 2019 in favor of Aris and LDU on the ground that there was "a rational basis for her award based on the evidence presented" (petition, exhibits P & Q).

Discussion

An arbitration award may be vacated pursuant to CPLR 7511 (b) (1) (iii) where an arbitrator exceeded his or her power,

including where the award violates strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power (see Matter of Isernio v Blue Star Jets, LLC, 140 AD3d 480, 480 [1st Dept 2016]). Where arbitration is compulsory, "judicial review under CPLR Article 75 is broad, requiring that the award be in accord with due process and supported by adequate evidence in the record The award must also be rational and satisfy the arbitrary and capricious standard of CPLR article 78" (Motor Veh. Mfrs. Assn. of U.S. v State of New York, 75 NY2d 175 [1990]).

Arbitration under the no-fault law is compulsory, therefore, "the scope of review . . . is whether the arbitration award was arbitrary and capricious, irrational or without a plausible basis" (Matter of General Acc. Fire & Life Assur. Corp. (Avery), 88 AD2d 739, 740 [3d Dept 1982], citing Matter of Petrofsky (Allstate Ins. Co.), 54 NY2d 207 [1981]; Matter of Miller v Elrac, LLC, 170 AD3d 436, 437 [1st Dept 2019]). The Master Arbitrator has the authority to review the standards of CPLR article 75 or on the ground that the award was "incorrect as a matter of law" (11 NYCRR § 65-4.10 [a] [4]). A court cannot substitute its judgment for that of the arbitrator simply for attorneys fees' and costs payment of a related claim, but Country-Wide never did so. Arbitrator Filosa found "that Country Wide failed to persuade this arbitrator that no coverage

existed", as no evidence was submitted to show that Country-Wide conducted an investigation regarding the claim. In addition, Arbitrator Filosa found that Country-Wide "failed to properly rebut MVAIC's argument that the payment issued created coverage." For such reasons, this court finds no basis to disturb this finding (Fitzgerald, 48 AD3d at 247).

Further, the court finds that the Master Arbitrator correctly determined that Arbitrator Filosa did not exceed her powers and determined that the decision was rational and neither arbitrary, capricious nor incorrect as a matter of law. The Master Arbitrator examined the entire record in rendering her decision to affirm the awards and determined that the awards issued by Arbitrator Filosa "set forth a rational basis . . . based on the evidence presented." Petitioner fails to meet its burden of demonstrating that the awards should be disturbed by the court.

Based on the foregoing, the petition to vacate the awards shall be denied; and the cross petitions to confirm the awards shall be granted. In addition, respondents Aris and LDU are

entitled to an award of attorneys' fees for services rendered in connection with this "court appeal from a master arbitration award," which are to be awarded as a matter of course (11 NYCRR 65-4.10 [j] [4]; Matter of GEICO Ins. Co. v AAAMG Leasing Corp., 148 AD3d 703 [2d Dept 2017]).

<u>12/10/2020</u> DATE	<u><i>Debra A. James</i></u> DEBRA A. JAMES, J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE