

Country-Wide Ins. Co. v Columbus Imaging Ctr.

2020 NY Slip Op 34211(U)

December 16, 2020

Supreme Court, New York County

Docket Number: 652697/2020

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. 652697/2020

Petitioner(s),

MOTION DATE

- against-

MOTION SEQ. NO. 1

MOTION CAL. NO.

COLUMBUS IMAGING CENTER a/a/o ERIC LARA.

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 _____

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Replying Affidavits

|

Cross-Motion: Yes X No

Petitioner Country-Wide Insurance Company (“CWI”) commenced this proceeding by submitting 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 August 24, 2019 [“the Award”] and a Master Arbitration award dated December 29, 2019, 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, and the Master Arbitrator erred in affirming the award.” Respondent Columbus Imaging Center a/a/o Eric Lara (“Respondent” or “Columbus Imaging”) opposes the Petition and seeks attorney’s fees pursuant to 11 NYCRR 65-4.10(j)(4).

Factual Background and Procedural History

This matter arises from a motor vehicle accident that occurred on September 30, 2015, involving a vehicle registered in New York State and insured by CWI. Eric Lara (“Claimant”) was the driver of the vehicle insured by CWI that was struck by another vehicle. Claimant sustained injuries and received medical services from Columbus Imaging. Columbus Imaging thereafter sought reimbursement from CWI for the medical services it had provided to Claimant. CWI denied Columbus Imaging’s “claim based upon a policy violation alleging

that the EIP [eligible injured party] failed to appear for scheduled and rescheduled examinations under oath on 1/14/2016 and 2/09/2016.”

This matter proceeded to arbitration on July 18, 2019, before Arbitrator Marina O’Leary (hereinafter “the lower Arbitrator”). The lower Arbitrator found in Columbus Imaging’s favor. The lower Arbitrator found that the verification requests that CWI sent to Columbus Imaging after receipt of Columbus Imaging’s claim were defective because they failed to advise Columbus Imaging of the pending examination under oath of Claimant. The lower Arbitrator, citing to *Doshi Diagnostic Imaging Servs. v. State Farm Ins. Co.*, 16 Misc3d 42 (App. Term 2nd Dept. 2007), held that while the verification requests sent to Columbus Imaging advised that the claim was delayed pending “examination under oath [EUO] of the eligible injured person,” the requests failed to advise of the date, time and place of the EUO. CWI appealed the lower Arbitrator’s decision to the Master Arbitrator.

On December 29, 2019, the Master Arbitrator held that “the arbitrator below arrived at her decision in a rational manner and that the evidence was sufficient for the arbitrator to make her findings and support her determination” and the Award “was neither irrational, arbitrary and capricious or incorrect as a matter of law and is therefore affirmed.”

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*, 170 AD 3d 436, 436-437(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 (4th Dept 2018), *and leave to appeal denied*, 109 NE3d 1156 (2018).

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). "[T]he review powers of the master arbitrator include the power to determine if the arbitrator's award was 'incorrect as a matter of law.'" *Matter of Liberty Mut. Ins. Co. v Spine Americare Med., P.C.*, 294 AD2d 574, 576 (2d Dept 2002). "If the master arbitrator vacates the arbitrator's award based upon an alleged error of 'a rule of substantive law,' the determination of the master arbitrator must be upheld unless it is irrational." *Id.* at 576.

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 Award. Here, the lower Arbitrator demonstrated a rational basis for the Award. The lower Arbitrator, after conducting a hearing and reviewing the evidence, determined that the verification requests that CWI sent to Columbus Imaging were defective as they failed to properly advise Columbus Imaging of the pending EUO. The lower Arbitrator specifically noted that requests failed to advise the date, time and place that the EUO was to be held. Further, the Master Arbitrator properly concluded that the lower Arbitrator did not exceed her powers and determined that the decision was rational and neither arbitrary, capricious nor incorrect as a matter of law.

Columbus Imaging seeks an award of attorney's fees pursuant to 11 NYCRR 65-4.10(j)(4). In *Matter of Country-Wide Ins. Co. v. Bay Needle Care Acupuncture, P.C.*, 162 AD3d 407 [1st Dept 2018], the First Department held that the "Supreme Court has authority to award attorney's fees as this is an appeal from a master arbitration award pursuant to 11 NYCRR 65-4.10(j)(4), which, in pertinent part, provides: "The attorney's fee for services rendered in connection with . . . a court appeal from a master arbitration award and any further appeals, shall be fixed by the court adjudicating the matter." Here, Columbus Imaging provides no affidavit or any other documentation supporting its request for attorney's fee.

Wherefore, it is hereby

ORDERED that the Petition of Country-Wide Insurance Company is denied;
and

ORDERED that the arbitration award in the matter of *Columbus Imaging Center a/a/o Eric Lara v. Country-Wide Insurance Company* - AAA Case No:17-18-1083-3843 is hereby confirmed in all respects; and it is further

ORDERED that the Clerk shall enter a judgment in favor of Respondent Columbus Imaging Center a/a/o Eric Lara against Petitioner Country-Wide Insurance Company as follows: (a) \$1,837.68 plus interest from January 8, 2018 at the rate of two per cent (2%) per month, together with (b) Respondent's fees of 20% of the amount of first party benefits plus interest thereon subject to a

maximum fee of \$1,360.00; together with (c) forty dollars (\$40) to reimburse respondent for the fees paid to AAA unless the fee was previously returned; and it is further

ORDERED that Respondent's request for attorney's fees pursuant to 11 NYCRR 65-4.10(j)(4) is denied without prejudice to a new application with the supporting documentation.

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

Dated: December 16, 2020

ENTER: 
_____ J.S.C.

HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION