Country-Wide Ins. Co. v NYC Community Med. Care, PC
2021 NY Slip Op 30156(U)
January 13, 2021
Supreme Court, New York County
Docket Number: 656005/2020
Judge: Eileen A. Rakower

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

PRESENT: Hon. EILEEN A. RAKOWER **PART 6**

Justice

COUNTRY-WIDE INSURANCE COMPANY,

Petitioner(s),

- against-

NYC COMMUNITY MEDICAL CARE, PC, a/a/o LIONEL TITUS,

Respondent(s).

INDEX NO. 656005/2020

MOTION DATE

MOTION SEQ. NO. 1

MOTION CAL. NO.

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") commenced this proceeding by submitting a Petition pursuant to CPLR 7511(b)(1)(i), CPLR 7511(b)(1)(iii), and CPLR 7511(b)(1)(iv) to vacate a lower Arbitrator's Award dated June 1, 2020 ("the Award"), and a Master Arbitration Award dated August 12, 2020. Respondent NYC Community Medical Care, PC a/a/o Lionel Titus ("Respondent" or "NYC CMC") does not oppose.

Factual Background and Procedural History

This matter arises from a motor vehicle accident that occurred on August 6, 2017, involving a vehicle registered in New York State and insured by CWI. Lionel Titus ("Claimant") was the driver of the vehicle insured by CWI that was struck by another vehicle. Claimant allegedly sustained injuries in the accident and received healthcare services from NYC CMC. NYC CMC thereafter sought reimbursement from CWI for the medical services that it had provided to Claimant. CWI denied the claim for reimbursement based on Claimant's failure to appear for orthopedic, acupuncture and chiropractic Independent Medical Examinations ("IMEs") on two occasions.

This matter proceeded to arbitration. On May 26, 2020, Arbitrator Felix Papadakis (hereinafter "the lower Arbitrator" or "Arbitrator Papadakis") held a hearing. CWI states, "[a]t the outset of the hearing, Petitioner [CWI] requested continuance of the hearing, in order to await resolution of the declaratory judgment action pending in Supreme Court, which Respondent herein was a part of as a defendant." CWI states that, "Arbitrator Papadakis declined to honor Petitioner's request, and proceeded with the hearing based on the IME no show defense." Arbitrator Papadakis found that CWI failed to substantiate its defense as to the two missed EUOs and awarded $1,943.07 to NYC CMC.

CWI appealed Arbitrator Papadakis' decision to the Master Arbitrator. CWI argued that the award was arbitrary, capricious and incorrect as a matter of law. CWI also argued that that Award should be vacated based on a declaratory judgment entered against Claimant and NYC CMC in a separate Supreme Court action bearing Index No. 650986/2019. On August 12, 2020, the Master Arbitrator held that "the award below was cogently thought out and clearly articulated and certainly not irrational, arbitrary and capricious or incorrect as a matter of law" and affirmed the award in its entirety.

In the pending Petition, CWI "reasserts its position that the Awards should be vacated on the grounds the doctrines of res judicata and collateral estoppel shall be applied based on a Supreme Court Declaratory Judgment, and that the lower Arbitrator exceeded her power, and the Master Arbitrator erred in affirming the Award."

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.

"The failure of a person eligible for no-fault benefits to appear for a properly noticed EUO constitutes a breach of a condition precedent vitiating coverage." *Mapfre Ins. Co. of New York v Manoo*, 140 AD3d 468, 470 (1st Dept 2016). "To vitiate coverage, it must be shown that the notices for EUOs were timely and properly mailed to the claimants and that the claimants failed to appear." *Id.*

The doctrine of collateral estoppel precludes a party "from relitigating in a subsequent action an issue clearly raised and decided against that party in a prior action." *Ji Sun Jennifer Kim v Goldberg, Weprin, Finkel, Goldstein, LLP*, 120 AD3d 18, 23 (1st Dept 2014). To successfully invoke the doctrine, "the issue in the second action must be identical to an issue which was raised, necessarily decided and material in the first action," and "the party to be precluded must have had a full and fair opportunity to litigate the issue in the earlier action." *Id.* at 34. "The doctrine of collateral estoppel is applicable to arbitration awards, including those rendered in disputes over no-fault benefits, and will bar relitigation of the same claim or issue." *Country-Wide Ins. Co. v Axial Chiropractic, P.C.*, 2016 WL 6139812, No. 652969/2016 (N.Y. Sup Ct, New York County 2016) (citing *Matter of Ranni [Ross]*, 58 NY2d 714, 717 [1982]; *Monroe v. Providence Washington Ins. Co.*, 126 AD2d 929 [3d Dept 1987]).

"An arbitration award may be vacated as barred by the preclusive effect of a judgment or settlement entered in prior litigation." *Matter of Tokio Mar. & Fire Ins. Co. v Allstate Ins. Co.*, 8 AD3d 492 (2d Dept 2004). A "Supreme Court's order is a conclusive final determination, notwithstanding that it was entered on default." *Best Touch PT, P.C. v Am. Tr. Ins. Co.*, 49 Misc 3d 154(A) (App Term 2015).

"While the preclusive effect of a pre-arbitration judicial decision may be sufficient to vacate an arbitral award… a post-arbitration judicial determination concerning the insurer's liability is not one of the limited grounds for vacating an arbitration award…" *Hereford Ins. Co. v Iconic Wellness Surgical Servs., LLC*, 2019 NY Slip Op 50801(U) (Sup. Ct., App. Term, 1st Dept 2019) (internal citation and quotation marks omitted).

Discussion

The motion to vacate the Award and the Master Arbitration decision is denied.

CWI fails to set forth a basis for disturbing the Award. Here, Arbitrator Papadakis demonstrated a rational basis for the Award, including that CWI failed to substantiate its defense as to the two missed EUOs. Further, the Master Arbitrator properly concluded that Arbitrator Papadakis did not exceed his powers and determined that the decision was rational and neither arbitrary, capricious nor incorrect as a matter of law.

The referenced declaratory judgment is dated June 17, 2020 and was decided after the Award was rendered. While the declaratory judgment found that CWI owed no duty to NYC CMC (among other medical providers) "to pay No-Fault claims submitted in relation to the August 6, 2017 loss" and stayed all arbitrations, "a post-arbitration judicial determination concerning the insurer's liability is not one of the limited grounds for vacating an arbitration award…" *Hereford Ins. Co. v Iconic Wellness Surgical Servs., LLC*, 2019 NY Slip Op 50801(U) (Sup. Ct., App. Term, 1st Dept 2019) (internal citation and quotation marks omitted).

Wherefore, it is hereby

ORDERED that the Petition to vacate the Award and Master Arbitration Award is denied.

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

Dated: January 13, 2021

ENTER: _____ J.S.C.

HON. EILEEN A. RAKOWER

Check one: X FINAL DISPOSITION NON-FINAL DISPOSITION