

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

2021 NY Slip Op 30374(U)

February 8, 2021

Supreme Court, New York County

Docket Number: 652433/2020

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. 652433/2020

Petitioner,

MOTION DATE

- against-

MOTION SEQ. NO. 1

MOTION CAL. NO.

**ICONIC WELLNESS SURGICAL SERVICES, LLC
a/a/o ERIC MOLYNEAUX,**

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”) 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 November 15, 2019 and a Master Arbitration Award dated March 20, 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, and the Master Arbitrator erred in affirming the award.” The lower Arbitrator had awarded Respondent Iconic Wellness Surgical, LLC a/a/o Eric Molyneaux (“Iconic”) the amount of \$1,960.68 plus interest and the Master Arbitrator affirmed the lower Arbitrator’s Award. Iconic opposes the Petition and requests that the awards be confirmed.

Background

This matter arises from an underlying accident that occurred on June 2, 2017 involving a vehicle registered in New York State and insured by CWI. Eric Molyneaux (“Claimant”) was involved in the accident. Following the accident,

Claimant received healthcare services from Iconic that included left shoulder arthroscopic surgery. Iconic submitted medical bills for reimbursement for the medical services provided to Claimant. CWI denied Iconic's claim for reimbursement on the grounds that the procedure was not medical necessary based on the peer review report of Charles Granatir, M.D.

This matter proceeded to arbitration on November 13, 2019 before Arbitrator Henry Sawitz, Esq. (hereinafter "the lower Arbitrator"). The lower Arbitrator held that CWI did not meet its burden of demonstrating that the left shoulder arthroscopy was not medically necessary and awarded Claimant \$1,960.68, the amount of the assistant surgeon's fees related to the procedure.

CWI appealed the lower Arbitrator's decision to the Master Arbitrator. CWI argued on appeal that although the policy was not currently exhausted, the pending award of linked AAA matter 41-17-1081-3907 would exceed the policy's limit of \$50,000. CWI argued that this linked award is dated November 10, 2019 and awarded \$11,211.31 against the same policy. CWI included a copy of the policy declaration page and updated payout ledger. The Master Arbitrator affirmed the lower Arbitrator's award, holding that the lower Arbitrator's review of the facts was not incorrect as a matter of law. The Master Arbitrator stated:

Respondent submits the policy declaration page for the subject liability policy, in effect on June 2, 2017, which states a Personal Injury Protection (No Fault) coverage amount of \$50,000. Respondent also submits a payment ledger which lists payments made from July 17, 2017 to June 19, 2018. However, the ledger does not state the total amount paid. Nor is the ledger attested to by someone with the requisite qualification to vouch for the accuracy of the ledger. Counsel's statement in the brief that, "In this case, the policy has \$7,326.59 remaining" is likewise inadequate as it does not provide a basis for the accuracy of the amount stated and does not say on what date the stated amount remained in the policy. Significantly, there is no evidence of what amount of money remained in the policy when the subject claim was deemed complete. *See, Ortho Passive Motion, Inc. v. Allstate Insurance Co.*, 55 Misc. 3d 152(A), 2017 N.Y. Slip Op. 50771(U) (App Term 2d Dept. 2017).

Parties' Positions

CWI contends that the lower Arbitrator's Award should be vacated on the grounds that the lower Arbitrator erred in awarding Iconic an amount, that in combination with the linked award, would exceed CWI's policy limit, and the Master Arbitrator erred in affirming the lower Arbitrator's Award.

Iconic opposes CWI's Petition and requests that the lower Arbitrator's Award should be confirmed. Iconic contends that the lower Arbitrator "reviewed the entirety of the medical evidence as available and came to a reasoned conclusion in support of Respondent." Iconic asserts that the "Master Arbitrator not only affirmed the decision of the NFA, but determined that petitioner failed to substantiate its policy exhaustion defense."

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).

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 (4th 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).

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). With respect to arbitration proceedings concerning no-fault insurance benefits, “[a]n award made in excess of the contractual limits of an insurance policy has been deemed an action in excess of authority.” *State Farm Ins. Co. v. Credle*, 643 N.Y.S.2d 97, 98 (1st Dept 1996).

Discussion

CWI fails to set forth a basis for disturbing the lower Arbitrator’s Award and the Master Arbitration 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 CWI “has not submitted sufficient evidence to meet its burden of demonstrating that the services at issue were either not causally related to the underlying automobile accident and/or not medically necessary or to justify its denial of reimbursement for these services.” Further, the lower Arbitrator found that CWI had failed to substantiate its policy

exhaustion defense. The Master Arbitrator properly concluded that 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.

Based upon the foregoing, the Petition for an order vacating the lower Arbitrator's Award dated November 15, 2019 and affirmed March 20, 2020 by a Master Arbitrator is denied. The Award in the matter of *Iconic Wellness Surgical Services, LLC a/o/o Eric Molyneaux* (AAA Case No.: 17-18-1100-1729) is hereby confirmed in all respects.

Wherefore, it is hereby,

ORDERED that the Petition to vacate the lower Arbitrator's award dated November 15, 2019 and the Master Arbitration Award dated March 20, 2020 is denied; and it is further

ORDERED that the arbitration award in the matter of *Iconic Wellness Surgical Services, LLC a/o/o Eric Molyneaux* (AAA Case No.: 17-18-1100-1729) 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/o/o Eric Molyneaux* against Petitioner *Country-Wide Insurance Company* as follows: (a) \$1,960.68 plus interest from July 9, 2018 at the rate of two per cent (2%) per month, *together with* (b) an attorney's fee based on the amount awarded of \$1,960.68 plus interest in accordance with 11 N.Y.C.R.R. §65-4.6; *together with* (c) forty dollars (\$40) for the fees paid to AAA unless the fee was previously returned; and it is further

ORDERED that Respondent shall serve a copy of this order, along with notice of entry, on all parties within 10 days of entry.

This constitutes the decision and order of the Court. All other relief requested is denied.

ENTER: _____



J.S.C.

HON. EILEEN A. RAKOWER

Dated: February 8, 2021

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION