

**Country-Wide Ins. Co. v Surgicore of Jersey City**

2021 NY Slip Op 30375(U)

February 8, 2021

Supreme Court, New York County

Docket Number: 652436/2020

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,  
Petitioner,**

**INDEX NO. 652436/2020**

**MOTION DATE**

**- against-**

**MOTION SEQ. NO. 1**

**MOTION CAL. NO.**

**SURGICORE OF JERSEY CITY  
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 \_\_\_\_\_

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) and CPLR §7511(b)(1)(iii) 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 awarded Respondent Surgicore of Jersey City a/a/o Eric Molyneaux the amount of \$799.66 plus interest, and the Master Arbitrator affirmed the lower Arbitrator’s Award. Iconic opposes the Petition and requests that the awards be confirmed.

**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.*

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.* 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 this Court to disturb the lower Arbitrator and Master Arbitration Awards. 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.” 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. Further, the Master Arbitrator considered CWI’s defense of policy exhaustion which was raised for the first time in the appeal to the Master Arbitrator and concluded that CWI had not substantiated the defense.

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 *Surgicore of Jersey City, LLC a/o/o Eric Molyneaux* (AAA Case No.: 17-18-1100-1742) 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 *Surgicore of Jersey City, LLC a/o/o Eric Molyneaux* (AAA Case No.: 17-18-1100-1742) is hereby confirmed in all respects; and it is further

ORDERED that the Clerk shall enter a judgment in favor of Respondent Surgicore of Jersey City, LLC a/a/o Eric Molyneaux against Petitioner Country-Wide Insurance Company as follows: (a) \$799.66 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 \$799.66 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**