

Country-Wide Ins. Co. v NJ Pain Solutions PC
2021 NY Slip Op 30392(U)
February 9, 2021
Supreme Court, New York County
Docket Number: 652330/2020
Judge: Eileen A. Rakower
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

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. 652330/2020

MOTION DATE

- against-

MOTION SEQ. NO. 1

MOTION CAL. NO.

**NJ PAIN SOLUTIONS PC
a/a/o PATRICK WILLIAMS**

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), CPLR §7511(b)(1)(iii), and CPLR 7511(b)(1)(iv) vacating a lower Arbitrator’s Award dated October 28, 2019 and a Master Arbitration Award dated January 8, 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 NJ Pain Solutions, PC a/a/o Patrick Williams (“NJ Solutions”) the amount of \$304.42 plus interest, and the Master Arbitrator affirmed the lower Arbitrator’s Award. NJ Solutions opposes the Petition and requests that the lower Arbitrator’s Award and the Master Arbitration 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).

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).

Discussion

CWI fails to set forth a basis for this Court to disturb the lower Arbitrator’s Award and the Master Arbitration Award. The lower Arbitrator, after conducting a hearing and reviewing the evidence including competing medical affidavits submitted by the parties, concluded that CWI failed to satisfy its burden of showing that the medical services provided by NJ Pain Solutions to the claimant

were not medically necessary. The Court finds no basis to disturb this finding. “[A]ssessment of the evidence presented at an arbitration proceeding is the arbitrator’s function rather than that of the court.” *Fitzgerald v Fahnestock & Co., Inc.*, 48 AD3d 246, 247 [1st Dept 2008], quoting *Peckerman v D&D Assocs.*, 165 AD2d 289, 296 [1st Dept 1991]). Further, the Master Arbitrator correctly determined 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. *Petrofsky*, 54 NY2d at 209.

Based upon the foregoing, the Petition for an order vacating the lower Arbitrator’s Award dated October 28, 2019 and affirmed on January 8, 2020 by the Master Arbitrator is denied. The Award in the matter of *NJ Pain Solutions a/a/o Patrick Williams P.C. v. Country-Wide Insurance* (AAA Case No.: 17-18-1100-1867) hereby is confirmed in all respects.

Wherefore, it is hereby,

ORDERED that the Petition to vacate the lower Arbitrator’s Award dated October 28, 2019 and the Master Arbitration Award dated January 8, 2020 is denied; and it is further

ORDERED that the arbitration award in the matter of *NJ Pain Solutions P.C. a/a/o Patrick Williams v. Country-Wide Insurance* (AAA Case No.: 17-18-1100-1867) is hereby confirmed in all respects; and it is further

ORDERED that the Clerk shall enter a judgment in favor of Respondent NJ Pain Solutions PC a/a/o Patrick Williams against Petitioner Country-Wide Insurance Company as follows: (a) \$304.42 plus interest from July 9, 2018 at the rate of two per cent (2%) per month, together with (b) an attorney’s fee in accordance with 11 N.Y.C.R.R. §65-4.6(d); together with (c) forty dollars (\$40) for the fees paid to AAA unless the fee was previously returned pursuant to an earlier award; 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 9, 2021

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION