

Country-Wide Ins. Co. v W.J.W. Med. Supplies, Inc.
2021 NY Slip Op 30419(U)
February 11, 2021
Supreme Court, New York County
Docket Number: 655205/2020
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. 655205/2020

Petitioner(s),

MOTION DATE

- against-

MOTION SEQ. NO. 1

MOTION CAL. NO.

**W.J.W. MEDICAL SUPPLIES, INC. A/A/O
MADELIN VERAS,**

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: X Yes No

Petitioner Country-Wide Insurance Company (“CWI”) commenced this proceeding by submitting a Petition seeking an Order vacating a lower Arbitrator’s Award dated April 16, 2020 (“the Award”) and a Master Arbitration Award dated July 12, 2020.

Respondent W.J.W. Medical Products, Inc. a/a/o Madelin Veras (“Respondent”) submits a Cross-Petition for an Order confirming the Award and Master Arbitration Award and for attorneys’ fees. CWI opposes the Cross-Petition.

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, concluded that CWI’s “defense as set forth in the general denial cannot be sustained.” The lower Arbitrator specified that CWI “set forth an illegible handwritten statement from its driver,” and “[t]his alleged sworn statement of the driver was illegible, unable to be deciphered and amounted to insufficient credible proof.” The lower Arbitrator further found that CWI “did not submit any other evidence and the defense cannot be sustained.” The lower Arbitrator also reviewed CWI’s purported specific denials of coverage and concluded that they were defective. The Court finds no basis to disturb these

findings. “[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 April 16, 2020 and affirmed on July 12, 2020 by the Master Arbitrator is denied. The Award in the matter of *WJW Medical Products, Inc. a/a/o Madelin Veras v. Country-Wide Insurance* (AAA Case No.: 17-19-1123-3065) hereby is confirmed in all respects.

Respondent requests an award of attorney’s fees pursuant to 11 NYCRR 654-4.10(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, Respondent provides no affidavit or any other documentation supporting its request for attorney’s fees.

Wherefore, it is hereby

ORDERED that the Petition of Country-Wide Insurance Company is granted and the lower Arbitrator’s Award dated April 16, 2020 and the Master Arbitration Award dated July 12, 2020 is denied; and it is further

ORDERED that the cross-petition of Respondent WJW Medical Products, Inc. a/a/o Madelin Veras for the confirmation of the awards are granted; and it is further

ORDERED that the arbitration award in the matter of *WJW Medical Products, Inc. a/a/o Madelin Veras v. Country-Wide Insurance* (AAA Case No.: 17-19-1123-3065) is hereby confirmed in all respects; and it is further

ORDERED that the Clerk shall enter a judgment in favor of Respondent WJW Medical Products, Inc. a/o/o Madeline Veras against Petitioner Country-Wide Insurance Company as follows: (a) \$1,967.99 plus interest from March 22, 2019 at the rate of two per cent (2%) per month, together with (b) attorney's fees 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; 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: February 11, 2021

ENTER: _____



J.S.C.

HON. EILEEN A. RAKOWER

Check one: X FINAL DISPOSITION NON-FINAL DISPOSITION