

Country-Wide Ins. Co. v NJ Pain Solutions, P.C.

2021 NY Slip Op 30660(U)

March 2, 2021

Supreme Court, New York County

Docket Number: 652384/2020

Judge: Carol R. Edmead

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This opinion is uncorrected and not selected for official publication.

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

<p>PRESENT: <u>HON. CAROL R. EDMEAD</u></p> <p style="text-align: center;"><i>Justice</i></p> <p>-----X</p> <p>COUNTRY-WIDE INSURANCE COMPANY</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">- v -</p> <p>NJ PAIN SOLUTIONS, P.C.,</p> <p style="text-align: center;">Defendant.</p> <p>-----X</p>	<p>PART IAS MOTION 35EFM</p> <p>INDEX NO. <u>652384/2020</u></p> <p>MOTION DATE <u>06/10/2020</u></p> <p>MOTION SEQ. NO. <u>001</u></p> <p style="text-align: center;">DECISION + ORDER ON MOTION</p>
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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, it is

ORDERED that the petition of Petitioner Country-Wide Insurance (Motion Seq. 001) is denied in its entirety; and the Award of the Lower Arbitrator, as affirmed by Master Arbitrator, is confirmed; and it is further

ORDERED that the Clerk shall enter judgment accordingly; and it is further

ORDERED that counsel for Respondent shall serve a copy of this order, along with notice of entry, on all parties within 20 days of entry.

MEMORANDUM DECISION

In this Article 75 action, Petitioner Country-Wide Insurance Company seeks, pursuant to CPLR 7511(b)(1)(iii), an order vacating a no-fault arbitration award dated February 6, 2020 (the “Award”) issued in favor of Respondent NJ Pain Solutions, P.C. a/a/o Felix Popo. Respondent opposes and moves for the confirmation of the Award.

For the reasons set forth below, the Court denies the petition to vacate the Award and confirms the same.

BACKGROUND FACTS

Mr. Felix Popo (“Mr. Popo”), Respondent’s assignor, was injured in an automobile accident on November 14, 2016 and sought medical treatment from Respondent (NYSCEF doc Nos. 1, ¶¶ 3-5). Respondent thereafter submitted Mr. Popo’s medical bills to Petitioner for reimbursement and was denied on the grounds that Mr. Popo’s automobile policy in the amount of \$50,000 was exhausted (*id.*).

The parties then proceeded to arbitration before arbitrator Christopher Persad (the “Lower Arbitrator”) on September 4, 2019. At said proceeding, Petitioner raised the defense of the exhaustion of the \$50,000 policy limit. The Lower Arbitrator rejected this argument, holding that Respondent was entitled to the full amount in dispute given that Petitioner received the bills prior to the exhaustion of the policy (NYSCEF doc No. 3, pp. 4-5). Accordingly, the Lower Arbitrator issued the Award in favor of Respondent herein and granted its claim in the amount of \$638.57 (*id.*).

Petitioner sought review of the Award on the ground that the Lower Arbitrator erred in determining that there was insufficient evidence to support the conclusion that the policy had

already been exhausted, and that Petitioner's payout ledger demonstrated the award was clearly in excess of the policy limit. (NYSCE doc No. 5).

On February 6, 2020, Master Arbitrator Richard Ancowitz affirmed the Award, holding that Petitioner's evidence did not clearly demonstrate policy exhaustion, and noting that "it is not clear that this policy was indeed exhausted. I cannot conclusively state that the evidence submitted to the master arbitrator- even if it could be properly received and considered, compels a finding for respondent. If I were to disturb the award, I would be improperly invading the province of the arbitrator to review the evidence" (NYSCEF doc No. 6 at 2 [internal citations removed]).

Petitioner now seeks vacatur of the Award pursuant to CPLR 7511 (b)(1)(i)(iii), arguing that the Lower Arbitrator exceeded his power under CPLR § 7511 (b)(1)(iii) when he issued an award directing payment in excess of the monetary limit of the subject no-fault insurance policy, and the Master Arbitrator erred in affirming the same (NYSCEF doc No. 1, ¶ 22)¹.

In opposition, Respondent argues that the arbitrators properly weighed the evidence before them in determining that Petitioner failed to substantiate its policy exhaustion defense (NYSCEF doc No. 10 at 7). Respondent accordingly contends that this petition should be dismissed and the Award confirmed.

DISCUSSION

Pursuant to CPLR Article 75, a final and definite arbitration award will not be vacated unless "it is violative of a strong public policy, or is totally irrational, or exceeds a specifically enumerated limitation on [the arbitrator's] power" (*See Matter of Isernio v Blue Star Jets, LLC*, 140 AD3d 480, 480 [1st Dept 2016]). Where arbitration is compulsory, "judicial review under

¹ In its appeal of the Lower Arbitrator's decision, Petitioner also argued that the procedures Mr. Popo underwent lacked medical necessity (NYSCEF doc No. 5). However, Petitioner does not challenge the part of the Master Arbitrator's decision upholding the Lower Arbitrator's findings in favor of Respondent on that issue.

CPLR Article 75 is broad, requiring that the award be in accord with due process and supported by adequate evidence in the record The award must also be rational and satisfy the arbitrary and capricious standard of CPLR article 78" (*Motor Veh. Mfrs. Ass'n of U.S. v State of New York*, 75 NY2d 175 [1990]). While compulsory arbitration decisions require a stricter scrutiny than consensual ones, courts are still bound by the arbitrator's factual findings, interpretation of relevant documents, and judgment concerning remedies. A court cannot substitute its judgment for that of the arbitrator simply because it believes its interpretation is superior to that of an arbitrator who has made errors of judgment or fact (*Matter of New York State Correctional Officers & Police Benevolent Ass'n v. State of New York*, 94 NY2d 321 [1999]).

Awards are also not vacated even where the error claimed is the incorrect application of a rule of substantive law, unless the error is so 'irrational as to require vacate" (*Matter of Smith [Firemen's Ins. Co.]*, 55 NY2d 224, 232 [1982]). To be upheld, an award in an arbitration proceeding need only have evidentiary support and not be arbitrary and capricious (*See Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223 [1996]). Even though the decision must have evidentiary support, "[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 Dep't 1991]). Under Article 75, arbitrators are not bound by substantive rules of law, including those of evidence. (*Silverman v Benmor Coats, Inc.*, 61 N.Y.2d 299, 308 [1984]). "An arbitral award cannot be attacked on the ground that an arbitrator refused to consider, or failed to appreciate, particular evidence or arguments" (*Genger v. Genger*, 87 AD3d 871, 874 n. 2 [1st Dept 2011]). Under CPLR 7511(b)(1)(iii), as long as an arbitrator addresses the issues submitted for resolution, vacatur will not be granted, unless the award is completely irrational -- that is, the

resulting award goes beyond the issues before the arbitrator (*Rochester City Sch. Dist. v Rochester Teachers Ass'n*, 41 NY2d 578, 582 [1977]).

Petitioner specifically argues the Award should be overturned pursuant to CPLR 7511 (b)(1)(iii), which provides a basis to vacate an award if “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.” Indeed, “an arbitration 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*, 228 A.D.2d 191 [1st Dept 1996]). Such excess of authority constitutes grounds for vacatur of the award (*See Matter of Brijmohan v. State Farm Ins. Co.*, 92 N.Y.2d 821, 822 [NY Ct App, 1998]; *Countrywide Ins. Co. v. Sawh*, 272 A.D.2d at 245 [1st Dept 2000]; 11 NYCRR 65-1.1).

However, the Court finds that here vacatur of the Award under CPLR 7511 (b)(1)(iii) is unwarranted in view of the Lower Arbitrator’s rational finding that Petitioner failed to demonstrate evidence of policy exhaustion. Given that the scope of judicial review under CPLR 7511 is narrowly limited, this Court is precluded from revisiting the evidence that was presented and conducting its own assessment (*See Matter of Stolthaver Perth Amboy, Inc. v. JLM Mktg., Inc.*, 2017 NY Slip Op 31531(U) (Sup. Ct. NY Co., 2007) [“...a court may not review the weight the arbitrator gave conflicting evidence nor question the credibility findings of the arbitrator.”]) Regardless, the Court notes that Petitioner’s payout ledger (NYSCEF doc No. 5) fails to clearly show that the policy was properly exhausted before Petitioner was obligated to pay the claims at issue here (*see Mount Sinai Hosp. v. Dust Tr., Inc.*, 104 AD3d 823 [2d Dept 2013] [Similar to this case, the defendant therein “failed to establish the order in which the medical services were rendered, and the order in which the claims were received.”] Thus, the Court held that based on the

record, "it cannot be determined whether the defendant's purported payments were made in compliance with 11 NYCRR 65-3.15."])

As the record reflects that the arbitrators both reviewed the evidence before them and came to the reasonable conclusion that it was unclear that Petitioner's policy limits were exhausted, the Court finds that there is no rational basis to disturb the arbitrators' findings and confirms the Award in its entirety.

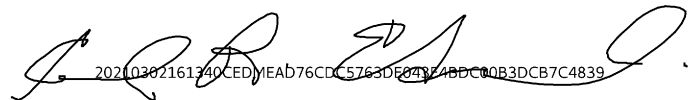
CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the petition of Petitioner Country-Wide Insurance (Motion Seq. 001) is denied in its entirety; and the Award of the Lower Arbitrator, as affirmed by Master Arbitrator, is confirmed; and it is further

ORDERED that the Clerk shall enter judgment accordingly; and it is further

ORDERED that counsel for Respondent shall serve a copy of this order, along with notice of entry, on all parties within 20 days of entry.


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CAROL R. EDMEAD, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	REFERENCE
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