

**American Tr. Ins. Co. v Advanced Comprehensive
Lab. LLC**

2021 NY Slip Op 30836(U)

March 17, 2021

Supreme Court, New York County

Docket Number: 153915/2020

Judge: David Benjamin Cohen

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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**

PRESENT: HON. DAVID BENJAMIN COHEN PART IAS MOTION 58EFM

Justice

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INDEX NO. 153915/2020

AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

MOTION SEQ. NO. 001

- v -

ADVANCED COMPREHENSIVE LABORATORY LLC D/B/A
TOPLAB A/A/O DENEICE SMITH,

**DECISION + ORDER ON
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

were read on this motion to/for DISMISSAL.

In this action by plaintiff American Transit Insurance Company (“ATIC”) seeking a trial de novo of a no-fault dispute, defendant Advanced Comprehensive Laboratory LLC (“ACL”) d/b/a Toplab a/a/o Deneice Smith moves, pursuant to CPLR 7511(a), to dismiss the complaint. Plaintiff opposes the motion. After consideration of the parties’ contentions, as well as a review of the relevant statutes, case law, and other legal authority, the motion is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND

This action arises from a motor vehicle accident on July 18, 2017 in which ACL’s assignor, Deneice Smith (“Smith”), was allegedly injured. Doc. 1. Following the occurrence, ACL performed laboratory testing services for Smith and submitted the claims for said services to ATIC for payment. Id. Subsequently, a dispute arose between ATIC and ACL regarding whether ATIC was required to pay the claims and the matter was submitted for arbitration. Id.

On October 19, 2019, a no-fault arbitrator determined that ATIC was required to pay the claims, which totaled \$5,566.44. Doc. 11. In a decision dated January 30, 2020, a master

arbitrator affirmed the findings of the no-fault arbitrator. The master arbitration award provided, inter alia, that: “[t]his master arbitration award is final and binding except for CPLR Article 75 review or where the award, exclusive of interest and attorney’s fees, exceeds \$5,000, in which case there may be court review de novo (11 NYCRR 65- 4.10(h))”, and that a party seeking to “adjudicate a dispute de novo shall follow the applicable procedures as set forth in CPLR Article 75.” Id. The master arbitrator’s decision was mailed on February 4, 2020. Id.

On June 4, 2020, ATIC commenced the captioned action seeking a trial de novo by filing a summons and verified complaint. Doc. 1.

ACL now moves, pursuant to CPLR 7511(a), to dismiss the complaint on the ground that the action is untimely.

In opposition, ATIC argues that the action is timely given certain executive orders (“EOs”) issued by Governor Cuomo which stayed statutes of limitation during the COVID-19 pandemic.

LEGAL CONCLUSIONS

CPLR 7511(a) provides that “[a]n application to vacate or modify an [arbitration] award may be made by a party within ninety days after its delivery to him.” Here, as noted above, the master arbitrator’s award was mailed to ATIC on February 4, 2020. Doc. 11. However, ATIC concedes that it received the master arbitrator’s award by email the same day. Doc. 1 at par. 4. Since the summons and complaint were filed on June 4, 2020, 120 days after ATIC obtained the master arbitrator’s award, ATIC clearly did not commence this action during the 90-day period set forth in CPLR 7511(a).

However, as ATIC asserts, on March 20, 2020, Governor Cuomo issued EO 202.8, entitled "Temporary Suspension and Modification of Laws Relating to the Disaster Emergency," which provides, in pertinent part, that:

"In accordance with the directive of the Chief Judge of the State to limit court operations to essential matters during the pendency of the COVID-19 health crisis, *any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including . . . the civil practice law and rules . . .* is hereby tolled from the date of this executive order until April 19, 2020"

(available at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.8.pdf [emphasis added]).

Through a series of subsequent EOs, the Governor continued this directive (with certain exceptions not relevant here) through November 3, 2020 (*see* EO 202.14 [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.14final.pdf]; EO 202.28 [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.28.pdf]; EO 202.48 [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.48.pdf]; EO 202.55 [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.55.pdf]; EO 202.60 [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.60.pdf]; EO 202.67 [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_202.67.pdf] [stating that "[t]he suspension in Executive Order 202.8, as modified and extended in subsequent Executive Orders, that tolled any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceedings as prescribed by the procedural laws of the state, including but not limited to . . . the civil practice law and rules . . . is hereby

continued, as modified by prior executive orders, provided however, for any civil case, such suspension is only effective until November 3, 2020, and after such time limit will no longer be tolled").

Given the foregoing, it is evident that ATIC commenced the captioned action 120 days after it received delivery of the master arbitrator’s decision. Under normal circumstances, this would have been 30 days too late. However, since the time for commencing an action or proceeding had already been tolled by the EOs for over two months by the time this action was commenced, the action is timely and ACL’s motion to dismiss must therefore be denied.

Accordingly, it is hereby:

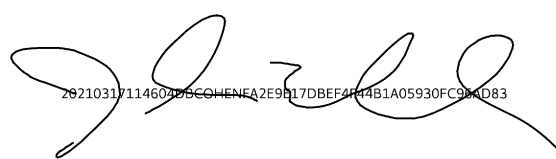
ORDERED that the motion by defendant Advanced Comprehensive Laboratory LLC d/b/a Toplab a/a/o Deneice Smith seeking to dismiss the complaint is denied; and it is further

ORDERED that said defendant is directed to serve an answer to the verified complaint within 30 days after service of this order with notice of entry; and it is further

ORDERED that the parties are to appear for a preliminary conference on May 10, 2021 at 3:00 p.m. unless they first complete a bar coded preliminary conference form (to be provided by the Part 58 Clerk) and email the same to the Part 58 Clerk at SFC-Part58-Clerk@nycourts.gov at least two business days prior to that date.

3/17/2021

DATE



DAVID BENJAMIN COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE