

Country-Wide Ins. Co. v Protechmed, Inc.
2021 NY Slip Op 30901(U)
March 22, 2021
Supreme Court, New York County
Docket Number: 656035/2020
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. 656035/2020

Petitioner,

MOTION DATE

- against-

MOTION SEQ. NO. 1

MOTION CAL. NO.

**PROTECHMED, INC., a/a/o SURAJ
MOHAMMED,**

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”) submits a Petition seeking an Order vacating a lower Arbitrator’s Award dated February 2, 2020 and a Master Arbitration Award dated April 14, 2020. The lower Arbitrator awarded Respondent Protechmed, Inc. a/a/o Suraj Mohammed (“Protechmed”) the amount of \$620.62 plus interest, and the Master Arbitrator affirmed the lower Arbitrator’s Award. Protechmed opposes the Petition. Protechmed submits a Cross Petition to confirm the award and for attorneys’ fees pursuant to 11 NYCRR 65-4.10(h)(2).

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 NYS2d 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 including the peer reviews that were submitted by the parties, concluded that Protechmed “properly denied Applicant’s [CWI’s] claim for the pneumatic compressor provided following the right shoulder surgery on April 11, 2018.” The lower Arbitrator concluded that CWI “failed to meet its ‘considerable burden’ of demonstrating lack of medical necessity.” 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 April 14, 2020 by a Master Arbitrator is denied. Protechmed’s Cross Petition is granted and the Award in the matter of *Protechmed Inc. a/a/o Suraj Mohammed v. Country-Wide Insurance Company* (AAA 17-18-1097-6744) is confirmed in all respects.

Protechmed requests an award of attorney’s fees pursuant to 11 NYCRR 65-4.10(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.’”

Protechmed’s attorney submits an affirmation detailing the hours incurred in opposing the Petition. Protechmed’s counsel avers that his office spent 3.5 hours of legal work. Respondent seeks attorney’s fees in the amount of \$1,400.00 pursuant to counsel’s billing rate of \$400.00 per hour. Protechmed has satisfied its burden by providing a detailed affirmation; therefore, the motion is granted.

Wherefore, it is hereby,

ORDERED that the Petition to vacate the lower Arbitrator's Award dated February 2, 2020 and the Master Arbitration Award dated April 14, 2020 is denied; and it is further

ORDERED that the arbitration award in the matter of *Protechmed Inc. a/a/o Suraj Mohammed v. Country-Wide Insurance Company* (AAA 17-18-1097-6744) is hereby confirmed in all respects; and it is further

ORDERED that the Clerk shall enter a judgment in favor of Respondent Protechmed Inc. a/a/o Suraj Mohammed against Petitioner Country-Wide Insurance Company as follows: (a) \$620.62 plus interest from June 13, 2018 at the rate of two per cent (2%) per month, together with (b) an attorney's fee in accordance with 11 NYCRR 65-4.6(d) 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 Protechmed Inc. a/a/o Suraj Mohammed's application for attorney's fees in the amount of \$1,400.00 is granted; and it is further

ORDERED that the Clerk enter judgment in favor of Respondent Protechmed Inc. a/a/o Suraj Mohammed and against Petitioner, Country-Wide Insurance Company, in the amount of \$1,400.00, together with interest as prayed for allowable by law (at the rate of 9% per annum) until the date of entry of judgment, as calculated by the Clerk, and thereafter at the statutory rate, together with costs and disbursements to be taxed by the Clerk upon submission of an appropriate bill of costs; and it is further

ORDERED that Respondent Protechmed Inc. a/a/o Suraj Mohammed 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: March 22, 2021

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION