

Country-Wide Ins. Co. v Apak Chiropractic P.C.

2021 NY Slip Op 31446(U)

April 28, 2021

Supreme Court, New York County

Docket Number: 650498/2021

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**

PRESENT: HON. CAROL R. EDMEAD PART IAS MOTION 35EFM

Justice

-----X

COUNTRY-WIDE INSURANCE COMPANY

Plaintiff,

- v -

APAK CHIROPRACTIC P.C.,

Defendant.

-----X

INDEX NO. 650498/2021

MOTION DATE 01/22/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 12 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 of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for Respondent APAK Chiropractic PC 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 an order vacating a Lower Arbitration Award dated August 11, 2020, and a Master Arbitration Award dated October 28, 2020, on the grounds that the lower arbitrator exceeded his authority, or so imperfectly executed it, that a final and definite award upon the subject matter submitted was not made, and that the Master Arbitrator erred in affirming the Award.

Respondent APAK Chiropractic PC opposes and moves for confirmation of the Lower and Master Arbitration Awards.

BACKGROUND FACTS

Mr. Kelvin Hinton (“Mr. Hinton”), Respondent’s assignor, was injured in an automobile accident on January 30, 2018 and sought medical treatment from Respondent (NYSCEF doc Nos. 1, ¶¶ 3-5).

On May 15, 2018, Respondent submitted Mr. Hinton’s medical bills to Petitioner for reimbursement in the amount of \$694.35 for services provided between April 2 and April 30, 2018 (*id.* at ¶ 6). Petitioner reduced the bill as it was in excess of the Worker’s Compensation Fee Schedule and issued a check dated June 11, 2018 to Respondent for \$627.53 and a denial for the remaining amount of \$66.82 (*id.*).

The parties then proceeded to arbitration before arbitrator Lucille S. DiGirolomo (the “Lower Arbitrator”) on July 13, 2020. In the arbitration, Respondent sought to be awarded \$694.35, the full amount of the claim, as originally submitted to Petitioner. Petitioner submitted in its defense a copy of the June 11, 2018 check in the amount of \$627.53 that Petitioner contended was endorsed by Respondent’s bank, but Respondent maintained that it did not cash the check submitted by Petitioner.

The Lower Arbitrator reviewed the evidence submitted by both parties and found that Petitioner failed to demonstrate sufficient proof that payment was made to Respondent:

“I will not allow a double payment to [Respondent], if, in fact, payment was made. Therefore, I reviewed [Petitioner]'s proofs regarding payment which includes a copy of a check made payable to [Respondent] in the amount of \$627.53. [Petitioner]'s counsel advised payment was in a lesser amount than what was billed because [Respondent] billed in excess of the Workers' Compensation Fee Schedule and reimbursement was adjusted to comply with the Fee Schedule.

[Respondent]'s counsel argued that his client never received the check and that the check submitted by [Petitioner] does not indicate it was cashed. He further argued, in the absence of a fee coder affidavit, [Petitioner]'s fee schedule argument cannot stand.

Based on the evidence presented, I allowed [Petitioner] until July 27, 2020 to upload proof that the check was cashed by [Respondent], as the copy submitted did not contain any endorsement or proof that the check was cashed. I also allowed [Respondent] until August 10, 2020 to review [Petitioner]'s submission and submit any argument it may have same.”

(NYSCEF do No. 3 at 2).

As no additional evidence was submitted, the Lower Arbitrator proceeded to evaluate Respondent's claims for reimbursement. The Lower Arbitrator ultimately found that Respondent was entitled to payment a of \$618.46. (*id*).

Petitioner sought review of the Award on the ground that the Lower Arbitrator erred in determining that there was insufficient evidence to determine that Respondent received Petitioner's June 11, 2018 check and cashed the same, and therefore Respondent was improperly paid twice (NYSCE doc No. 5).

On October 28, 2020, Master Arbitrator Alfred J. Wiener affirmed the Award, holding that the Lower Arbitrator properly determined that Petitioner failed to demonstrate that Respondent was previously paid in full, and the Lower Arbitrator's interpretation of the relevant evidence and applicable law was not “arbitrary, capricious or contrary to law” (NYSCEF doc No. 6 at 2).

Petitioner now seeks vacatur of the Award, arguing that the Lower Arbitrator exceeded her power under CPLR § 751 (b)(1)(iii) when she issued an award that was irrational and not supported by the evidence, and the Master Arbitrator erred in affirming the same (NYSCEF doc No. 1 at 4). Petitioner contends that it demonstrated an accord and satisfaction by submitting a copy of the June 11, 2018 check, and therefore the Lower Arbitrator's decision was erroneous (*id.* at 5).

In opposition, Respondent argues that the arbitrators properly weighed the evidence before them in determining that Petitioner failed to demonstrate Respondent was previously paid (NYSCEF doc No. 11 at 3). 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 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 vacatur' (*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]).

Here, 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."

However, the Court finds that vacatur of the Award is unwarranted. As discussed, the evidentiary record here reflects that the Lower Arbitrator specifically addressed Petitioner's argument that Respondent was already paid and directed Petitioner to submit additional proof on

this matter. The Master Arbitrator's decision also reflects that he evaluated the Lower Arbitrator's evaluation of the evidence and saw no basis to disturb the award, which was not improper given that the role of the master arbitrator is not to conduct a *de novo* review, but rather to review the determination of the lower arbitrator to ensure that the arbitrator reached her decision in a rational manner, and that the decision was not arbitrary and capricious, incorrect as a matter of law, or in excess of policy limits (*Petrofsky v AllState Insurance Co*, 54 NY2d 207 [1981]).

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."] Accordingly, even if the Court disagreed with the arbitrators' conclusion that Petitioner did not demonstrate sufficient evidence of previous payment, the Court may not substitute its own judgment for that of the arbitrators.

As the record reflects that the arbitrators both reviewed the evidence before them and came to the reasonable conclusion that Petitioner failed to demonstrate sufficient proof that Respondent was previously paid, the Court finds that there is no rational basis to disturb the arbitrators' findings and confirms the Award in its entirety.

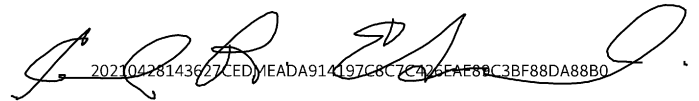
CONCLUSION

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 of the Court shall enter judgment accordingly; and it is further

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4/28/2021

DATE

CAROL R. EDMEAD, 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