

<b>Country-Wide Ins. Co. v Hudson Pain Medicine PC</b>
2022 NY Slip Op 30413(U)
February 1, 2022
Supreme Court, New York County
Docket Number: Index No. 656577/2021
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 EDMEAD PART 35

Justice

-----X

COUNTRY-WIDE INSURANCE COMPANY

Petitioner,

- v -

HUDSON PAIN MEDICINE PC,

Respondent.

-----X

INDEX NO. 656577/2021

MOTION DATE 12/16/2021

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13, 14, 15, 16, 17, 18

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, it is

ORDERED that the application of Petitioner Country-Wide Insurance Company (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 the counsel for Respondent Hudson Pain Medicine 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, pursuant to CPLR 7511, an order vacating a no-fault arbitration award dated June 17, 2021 (the “Award”) issued in favor of Respondent Hudson Pain Medicine PC. Respondent opposes the petition in its entirety.

### BACKGROUND FACTS

Ms. Bianca Severin (“Ms. Severin”), Respondent’s assignor, was injured in a motor vehicle accident on April 25, 2019. She sought medical advice and treatment, including injection therapies and electrodiagnostic testing, from Respondent from August 2019 through November 2019. Respondent thereafter sought reimbursement from Petitioner in the amount of \$4,754.44. Petitioner denied the Respondent’s claim on the grounds that before Ms. Severin’s accident, on April 8, 2019, Petitioner had terminated Ms. Severin’s auto insurance coverage over non-payment.

The parties proceeded to arbitration before arbitrator Lester Hill (the “Lower Arbitrator”), and a hearing was held over two days on April 23 and 30, 2021. (NYSCEF doc No. 3.) At said arbitration proceeding, Petitioner argued that it had effected the termination of Ms. Severin’s coverage prior to her accident and therefore could not be held liable to Respondent. As proof of the canceled policy, Petitioner submitted the cancellation letter it sent to Ms. Severin on March 13, 2019, as well as the letter’s post office mailing receipt. (NYSCEF doc No. 5.)

The Lower Arbitrator reviewed Petitioner’s submissions but found the submissions did not demonstrate proper notice of termination of the subject policy. At the April 30 hearing, the Lower Arbitrator afforded Petitioner an additional thirty days to demonstrate compliance with Vehicle and Traffic Law §313.2 (a), which requires that “the insurer shall file a notice of

termination with reference to such policy... with the commissioner [of Motor Vehicles] not later than thirty days following the effective date of such cancellation.” On May 21, 2021, within the thirty-day window, Petitioner submitted a supplemental submission that it contends demonstrated compliance with Vehicle and Traffic Law §313.2 (a).

By Award issued on June 17, 2021, the Lower Arbitrator rejected Petitioner’s claim, holding that Petitioner “submitted no documentation or proof that the [petitioner] filed notice of termination with the Commissioner of Motor Vehicles.” (*Id.*) As such, the Lower Arbitrator issued the Award in favor of Respondents for \$4,754.44 plus interest at a rate of 2% per month and attorney fees pursuant to 11 NYCRR 65-4.6 (e).

Petitioner sought review of the Award with Master Arbitrator Victor Hershdorfer (the “Master Arbitrator”), arguing that the Lower Arbitrator’s Award lacked fairness and equity. On August 20, 2021, the Master Arbitrator affirmed the Award, finding no basis to disturb the Lower Arbitrator’s determinations regarding Petitioner’s submissions to the Commissioner of Motor Vehicles. (NYSCEF doc No. 7.) The Master Arbitrator found that the Award “was not unfair or inequitable” given the Lower Arbitrator’s determination that Petitioner failed to establish it sent proper notice of cancellation to the Commissioner, thereby effectuating the termination of Ms. Severin’s coverage against third parties (*Id.*)

### *The Instant Proceeding*

Petitioner now seeks vacatur of the Award pursuant to CPLR 7511 (b)(1)(iii), arguing that the Lower Arbitrator determination was irrational and not supported by evidence. It further argues that the Master Arbitrator erred in affirming the Award. In support, Petitioner maintains that it submitted a filing report as a true copy of records maintained by the New York State Department of Motor Vehicles (“DMV”) as proof of its notice to the Commissioner. According

to Petitioner, the Lower Arbitrator failed to properly consider its submission. (NYSCEF doc No. 1.) Therefore, Petitioner contends the Lower Arbitrator's determination lacked evidentiary support and was arbitrary and capricious. (*Id.*)

In opposition, Respondent asserts that Petitioner has not demonstrated that the Award is subject to vacatur pursuant to CPLR 7511 (b)(1)(iii). Respondent maintains that the Lower Arbitrator correctly evaluated the respective parties' submissions and articulated a rational basis for his Award and that the Master Arbitrator, within the scope of his authority as limited by law, conducted a thorough review of the Award. (*Id.* at 3-7.)

### DISCUSSION

An arbitration award may be vacated pursuant to CPLR 7511(b)(1)(iii) where an arbitrator exceeded their power, including where the award violates strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's powers. (*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 arbitrations require stricter scrutiny than consensual ones, courts cannot conduct a *de novo* review of the evidence submitted at the arbitration proceeding. (*See Matter of Petrofsky v All State Insurance Company*, 54 NY 2d 207, 212 [1981].) Courts remain bound by the arbitrator's factual findings, interpretation of relevant documents, and judgment concerning remedies. (*Matter of New York State Correctional Officers & Police Benevolent Ass'n v. State of New York*, 94 NY2d 321, 326 [1999].) Further, under Article 75, "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].) Simply stated, courts cannot substitute their own judgment for that of the arbitrator simply because they believe their interpretation of the facts is superior. (*See Matter of New York State Correctional Officers & Police Benevolent Ass'n*, 94 NY2d at 326.) So 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].)

*Notice of Termination to the Commissioner of Motor Vehicles*

Here, Petitioner argues that vacatur of the Award is warranted under CPLR 7511 (b)(1)(iii) as the Lower Arbitrator came to a determination that lacked evidentiary support. Petitioner contends that the Lower Arbitrator either missed or failed to consider Petitioner’s supplementary May 21, 2021 submission, which Petitioner argues constitutes notice of policy termination to the Commissioner of Motor Vehicles in compliance with Vehicle and Traffic Law §313.2 (a). (*See* NYSCEF doc No. 1 at 4.) In opposition, Respondent maintains that the Lower Arbitrator’s Award reflects a conclusion arrived at after a careful consideration of all the evidence, including Petitioner’s alleged proof of notice.

Following its review of the parties’ submissions, the Court does not find any basis to disturb the Award. Petitioner’s position that its supplementary submission documents “were apparently not reviewed by Arbitrator Hill, as no mention of them is made in the arbitration award” is undermined by the Lower Arbitrator’s explicit acknowledgment that “I have reviewed the documents contained in the electronic case folder as of June 4, 2021. This decision is rendered based on those documents. . .” (NYSCEF doc No. 3 at 2.) Petitioner, in its support

papers, recognizes that it submitted its evidence on May 21, 2021, and consequently, the evidence was in the case folder well before the Lower Arbitrator's June 4, 2021 deadline for submissions. (*See* NYSCEF doc No. 1 at 3-4).

As the Lower Arbitrator specifically documented his consideration of Petitioner's proffered evidence in making the Award, the Court is precluded from revisiting the evidence that was presented and conducting its own assessment. (*See Matter of New York State Correctional Officers & Police Benevolent Ass'n*, 94 NY2d at 326 ["Courts are bound by an arbitrator's factual findings. . . A court cannot examine the merits of an arbitration award and substitute its judgment for that of the arbitrator."].) Regardless, the Court notes that Petitioner's May 21, 2021 submission consists of an electronic filing report (NYSCEF doc No. 5) that does not appear to conclusively demonstrate proper notice to the Commissioner. (*See Art of Healing Medicine, P.C. v. Allstate Ins. Co.*, 54 Misc. 3d 46, 46 [2d Dept. 2016]; *Government Employees Ins. Co. v Barthold*, 194 AD2d 724, 724 [2d Dept 1993] [holding that an insurer's "filing report" does not, as a matter of law, demonstrate proof of notice].)

As the record reflects that the Arbitrators both reviewed the evidence before them and came to the reasonable conclusion that Petitioner did not demonstrate proper notice of policy termination, the Court finds that there is no rational basis to disturb the Arbitrators' findings and confirms the Award in its entirety.

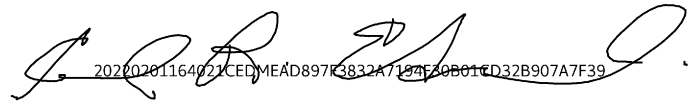
### CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the application of Petitioner Country-Wide Insurance Company (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 the counsel for Respondent Hudson Pain Medicine PC shall serve a copy of this order, along with notice of entry, on all parties within 20 days of entry.

  
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2/1/2022  
DATE

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CAROL 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