

Country-Wide Ins. Co. v Orthopro Servs., Inc

2022 NY Slip Op 30991(U)

March 23, 2022

Supreme Court, New York County

Docket Number: Index No. 650806/2022

Judge: Arlene Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. ARLENE BLUTH PART 14

Justice

-----X

COUNTRY-WIDE INSURANCE COMPANY

Petitioner,

- v -

ORTHOPRO SERVICES, INC, a/a/o EARLENE EDWARDS

Respondent.

-----X

INDEX NO. 650806/2022

MOTION DATE 03/22/2022

MOTION SEQ. NO. 001

**DECISION + ORDER,
JUDGMENT ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28

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

The petition to vacate a No-Fault Master Arbitrator’s award dated November 18, 2021 that awarded respondent \$806.64 is denied and the cross-petition to confirm that award is granted.

Background

Following a motor vehicle accident on April 28, 2014, Earlene Edwards sought healthcare services from respondent. Respondent then submitted medical bills to petitioner for \$806.64 and petitioner contends it timely denied these claims on the ground that they lacked medical necessity. Respondent then challenged this denial in an arbitration and the initial arbitrator sided with respondent, as did the master arbitrator.

Petitioner brings this proceeding to challenge the master arbitrator’s award. It also now claims that the subject policy is exhausted and that an award compelling it to pay the subject claim would be in excess of the policy at issue. Petitioner argues that it is entitled to make a policy exhaustion argument at any time.

In opposition and in support of its cross-petition to confirm the award, respondent argues that the master arbitrator's award was correct and that there is no basis to vacate it. It also insists that de novo review of the award is not permissible despite petitioner's efforts to do it in this proceeding. Respondent also disputes the payment ledger attached by petitioner to show the policy is allegedly exhausted. It emphasizes that petitioner must show proof of compliance with various insurance regulations before it can cite policy exhaustion as a ground to vacate the awards. And, specifically, respondent takes issue with a \$5,650.78 offset and argues that petitioner did not properly calculate it.

In reply, petitioner insists it is not asking for a de novo review of the arbitration award and that it has submitted sufficient proof that the policy has been exhausted.

In reply to its cross-petition, respondent maintains that petitioner has not established its prima facie case that the policy was, in fact, exhausted. It asserts that a bare bones payout ledger is not enough.

Discussion

CPLR 7510 states that "The court shall confirm an award upon application of a party made within one year after its delivery . . . unless the award is vacated or modified upon a ground specified in section 7511."

"CPLR 7511 provides just four grounds for vacating an arbitration award, including that the arbitrator exceeded his power, which occurs only where the arbitrator's award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power. Mere errors of fact or law are insufficient to vacate an arbitral award. Courts are obligated to give deference to the decision of the arbitrator, . . . even if the arbitrator

misapplied the substantive law in the area of the contract” (*NRT New York LLC v Spell*, 166 AD3d 438, 438-39, 88 NYS3d 34 [1st Dept 2018] [internal quotations or citations omitted]).

As an initial matter, the Court finds that the petitioner failed to cite a basis to vacate the arbitrator’s award or the award of the master arbitrator. Simply because petitioner disagrees with these awards is not a basis for this Court to vacate these decisions. Even if the arbitrator made an error with respect to the application of collateral estoppel, as stated above, an error of fact or law is not sufficient to vacate an arbitral award. And, in any event, the decisions were rational and the Court sees no reason to disturb them. Clearly, the arbitrators disagreed with petitioner’s contention that the medical services provided were not medically necessary. This Court cannot disturb that conclusion on these papers.

The other issue in this proceeding concerns policy exhaustion. It is undisputed that petitioner did not raise this argument before the arbitrators but petitioner may raise it here for the first time (*Allstate Prop. and Cas. Ins. Co. v Northeast Anesthesia and Pain Mgt.*, 51 Misc 3d 149(A), *1, 41 NYS3d 448 [App Term, 1st Dept 2016]). However, the Court finds that petitioner did not meet its burden to show the policy is exhausted. No documentation was attached detailing the policy limits and the payments. Instead, petitioner attached an affidavit from a No-Fault Litigation/Arbitration Supervisor that contains a chart, which purportedly shows the policy is exhausted (NYSCEF Doc. No. 7 at 2). This copy-and-pasted chart is not supported with any back-up documents and, as respondent points out, there are no dates indicated in this chart for when these payments were made.

Respondent also correctly observes that the \$5,650.78 in offsets is not sufficiently explained. Petitioner claims these are for “paid loss wages” but there are no exhibits submitted to support this contention. Instead, all that is offered is an assertion that somehow the claims paid

and the offsets magically lead to the policy's exhaustion. That conclusory argument does not compel the Court to grant petitioner's motion. Petitioner also failed to submit information about the order in which the claims were received or in which the medical services were provided (*Mount Sinai Hosp. v Dust Tr., Inc.*, 104 AD3d 823, 825, 962 NYS2d 307 [2d Dept 2013]). In order to assert policy exhaustion as a basis to vacate the award, petitioner had to establish that it properly paid claims consistent with the priority of payment regulations (*Is. Life Chiropractic Pain Care PLLC v Amica Mut. Ins. Co.*, 65 Misc 3d 1212(A) [Civ Ct, Kings County 2019]). That includes details about when it paid the bills and the "chart" does not do that. It contains a column titled "Issue Date" but the dates are not dates in a conventional sense; rather they contain markings such as "114/07/17" or "114/09/02." That does not establish that the policy was exhausted and petitioner cannot evade its obligations here.

Because the Court denies the petition, the Court grants the cross-petition to confirm (CPLR 7511[e]). And the Court also awards respondent legal fees pursuant to 11 NYCRR 65-4.10(j)(4) in the amount of \$1,837.50 as requested by respondent. Respondent attached an affirmation in support of its claim for legal fees detailing the hours worked on the case (NYSCEF Doc. No. 21). Counsel for respondent claims that he spent 5.25 hours to represent his client in this proceeding and seeks fees at an hourly rate of \$350. That rate (given counsel for respondent's fifteen years of experience) and the relatively few number of hours worked is entirely reasonable.

Accordingly, it is hereby

ADJUDGED that the petition to vacate the award is denied; and it is further

ADJUDGED that the cross-petition by respondent is granted and the award rendered in favor of respondent and against petitioner is confirmed; and it is further

ADJUDGED that Clerk is directed to enter judgment in favor of respondent and against petitioner in the amount of \$806.64 along with reasonable legal fees in the amount of \$1,837.50 for this proceeding, \$91.00 in fees awarded by the master arbitrator, along with costs and disbursements upon presentation of proper papers therefor.

3/23/2022
DATE


ARLENE BLUTH, J.S.C.

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