

Matter of GEICO Indem. Co. v ACE USA Group

2022 NY Slip Op 31658(U)

May 17, 2022

Supreme Court, New York County

Docket Number: Index No. 655714/2020

Judge: Louis L. Nock

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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. LOUIS L. NOCK **PART** **38M**

Justice

-----X

IN THE MATTER OF THE APPLICATION OF GEICO
INDEMNITY COMPANY AS SUBROGEE OF ANN LEWIS,

Plaintiff,

- v -

ACE USA GROUP, and INDEMNITY INSURANCE
COMPANY OF NORTH AMERICA,

Defendants.

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INDEX NO. 655714/2020

MOTION DATE 10/27/2020

MOTION SEQ. NO. 001

**DECISION + JUDGMENT ON
PETITION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 5, 6, 7, 8, 9, 10, 11, 12, and 13

were read on this motion to VACATE AWARD.

LOUIS L. NOCK, J.

Upon the foregoing documents, it is hereby ordered that the petition to vacate an arbitration award is denied, and the award is confirmed, based on the following memorandum decision.

Background

Petitioner GEICO Indemnity Company (“petitioner”), as subrogee of Ann Lewis (“Lewis”), commenced this special proceeding to vacate an arbitration award rendered in favor of respondent Indemnity Insurance Company of North America, sued herein as ACE USA Group, Indemnity Insurance Company of North America (“respondent”), in the amount of \$47,049.47. Petitioner argues that the award must be vacated pursuant to CPLR 7511(b)(1)(iii), because the arbitrator exceeded her power in making the award, or “so imperfectly executed it that a final and definite award upon the subject matter submitted was not made” (CPLR 7511[b][1][iii]).

Except where otherwise stated, the following facts are not in dispute. On January 3, 2017, Lewis was a passenger in taxicab operated by nonparty Moazzam Shafique and insured by nonparty American Transit Insurance Company (“American Transit”) (NYSCEF Doc. No. 1, ¶ 8). The taxi was struck from the rear by a vehicle insured by petitioner (*id.*; NYSCEF Doc. No. 6). Lewis received worker’s compensation benefits in the amount of \$47,049.47 through respondent in lieu of no-fault benefits (NYSCEF Doc. No. 1, ¶ 9; NYSCEF Doc. No. 9). At the same time, from June 27, 2017 through August 22, 2019, petitioner paid American Transit the amount of \$12,325.30 in no-fault benefits (NYSCEF Doc. No. 1, ¶ 11; *id.*, Exhibit A).

Pursuant to the mandatory arbitration provisions of Insurance Law § 5105, respondent commenced an arbitration before Arbitration Forums, Inc. to recover the workers’ compensation benefits it paid in lieu of no-fault benefits. A hearing was held before Arbitrator Meredith Charette on January 17, 2020 (*id.*, Exhibit B). The arbitrator found that petitioner’s insured vehicle was at fault in the accident for having followed the taxicab too closely before impact (*id.*). Further, the arbitrator held that respondent, as the workers’ compensation carrier, was entitled to recover the amount it paid out as the sole source of benefits pursuant to the no-fault regulations (Insurance Law § 5102[b][2]; 11 NYCRR 65-3.16[9]). Finally, the arbitrator stated that “[i]f the No Fault carrier afforded for medical benefits they did so in error and [GEICO] would be entitled to recover any money previously reimbursed for payments made in error” (NYSCEF Doc. No. 1, Exhibit B). Petitioner then commenced the instant special proceeding to vacate the award.

Standard of Review

An arbitration award shall be vacated “if the court finds that the rights of [a] party were prejudiced by . . . 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” (CPLR 7511[b][1][iii]). An arbitrator exceeds his or her power “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” (*Matter of New York City Tr. Auth. v Transport Workers' Union of Am., Local 100, AFL-CIO*, 6 NY3d 332, 336 [2005]). “Moreover, 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” (*id.*). “Outside of these narrowly circumscribed exceptions, courts lack authority to review arbitral decisions, even where an arbitrator has made an error of law or fact” (*Matter of Professional, Clerical, Tech., Empls. Ass'n [Board of Educ. for Buffalo City Sch. Dist.]*, 103 AD3d 1120, 1121 [4th Dept 2013]).

“An arbitration award may be vacated on public policy grounds only where it is clear on its face that public policy precludes its enforcement” (*Transparent Value, L.L.C. v Johnson*, 93 AD3d 599, 600 [1st Dept 2012]). “To vacate an award on the basis of irrationality, a party must show that there was no proof whatever to justify the award” (*Matter of Eastman Assoc., Inc. v Juan Orto Holdings, Ltd.*, 90 AD3d 1284, 1285 [3d Dept 2011]), or that the arbitrator “gave a completely irrational construction to the provisions in dispute and, in effect, made a new contract for the parties” (*Transparent Value, L.L.C.*, 93 AD3d at 601).

Moreover, where, as here, the award was rendered following statutorily mandatory arbitration, courts exercise “closer judicial scrutiny of the arbitrator's determination” (*Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223 [1996]). “To be upheld, an award in a compulsory arbitration proceeding must have evidentiary support and cannot be arbitrary and capricious” (*Matter of Fiduciary Ins. Co. v American Bankers Ins. Co. of Florida*, 132 AD3d 40, 46 [2d Dept 2015]). “[W]ith respect to determinations of law, the

applicable standard in mandatory no-fault arbitrations is whether any reasonable hypothesis can be found to support the questioned interpretation” (*id.*).

Finally, an arbitrator imperfectly executes their power such that a final and definite award is not made where the award “leaves the parties unable to determine their rights and obligations, if it does not resolve the controversy submitted or if it creates a new controversy” (*Matter of Meisels v Uhr*, 79 NY2d 526, 536 [1992]). “To be final and definite, it is necessary only that the award resolve the dispute submitted in a manner that does not remit the parties to a new controversy or future litigation, and that unequivocally indicates their respective rights and obligations and what each must do” (*Guetta v Raxon Fabrics Corp.*, 123 AD2d 40, 44 [1st Dept 1987]).

Discussion

A review of the record and the arbitrator’s award discloses no basis to find irrationality or a violation of public policy, and petitioner does not argue either ground. Nor does petitioner argue or the record reflect that the award was arbitrary and capricious or without evidentiary support. Instead, petitioner argues that the arbitrator failed to adequately consider the fact that it had previously made payments to American Transit when she awarded full reimbursement to respondent. In effect, petitioner argues, this caused petitioner to pay out benefits on the claim in excess of the policy limit of \$50,000. Petitioner argues that this was both in excess of an enumerated limit on the arbitrator’s power and rendered the award not final and definite. Turning first to the question of finality, the arbitrator’s award disposes of the dispute between the parties, namely whether petitioner should have been liable to respondent to repay the workers’ compensation benefits as provided under Insurance Law § 5105 (NYSCEF Doc. No. 1, Exhibit B). Further, the arbitrator addressed the issue of petitioner’s payments to American Transit,

stating that petitioner's payments were in error, and that petitioner would be able to recover such funds previously reimbursed (*id.*). Nothing in the award would lead the parties to a new controversy or litigation, the rights and obligations of the parties are clearly established, and the controversy between the parties is clearly resolved. Accordingly, the arbitrator's award is sufficiently final and definite (*Guetta*, 123 AD2d at 44).

The remaining question is whether the arbitrator's award exceeded the limits of the arbitrator's power, specifically by rendering an award of more than the policy limits. As a general matter, an arbitration award may be vacated where the arbitrator's award exceeds the policy limits (*Matter of Brijmohan v State Farm Ins. Co.*, 92 NY2d 821, 822-23 [1998]). Evidence that the policy limits have been exceeded may be introduced at any time, including for the first time upon a petition by the prevailing party to confirm the award (*id.* at 822). Neither party disputes that the policy limit is \$50,000. The arbitrator's award is \$47,049.47, which is within the policy limits (NYSCEF Doc. No. 1, Exhibit B). Petitioner argues that its payments to American Transit should be included, reducing the amount due to respondent, and the arbitrator erred in failing to do so. To the extent that petitioner is asserting a setoff, such issue is waived if not raised before the Court prior to the arbitration (*Matter of Rampersaud [American Tr. Ins. Co.]*, 266 AD2d 21, 21 [1st Dept 1999]). Moreover, the arbitrator did in fact consider this issue, though there is some dispute among the parties whether it was properly raised before her. Nevertheless, her determination is that the payments to American Transit were made in error. Petitioner cites no authority for the proposition that respondent should, in effect, be penalized because petitioner made payments to American Transit it should not have made. The Court notes in this regard that petitioner appears to have been on notice that respondent was providing

workers' compensation benefits yet continued to pay American Transit for more than a year (NYSCEF Doc. No. 9).

Accordingly, it is hereby

ADJUDGED that the petition to vacate the award is denied and, pursuant to CPLR 7511(e), the award rendered in favor of respondent and against petitioner is confirmed; and it is further

ADJUDGED that respondent Indemnity Insurance Company of North America, sued hereunder as ACE USA Group, Indemnity Insurance Company of North America, having an address at 436 Walnut Street, Philadelphia, PA 19106, do recover from petitioner GEICO Indemnity Company, having an address at 750 Woodbury Road, Woodbury, NY 11797, the amount of \$47,049.47, plus interest at the rate of 9% per annum from the date of January 17, 2020, as computed by the Clerk in the amount of \$ _____, together with costs and disbursements in the amount of \$ _____ as taxed by the Clerk, for the total amount of \$ _____, and that the respondent have execution therefor.

This constitutes the Decision and Judgment of the Court.

ENTER:



<u>5/17/2022</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
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