

<b>Country-Wide Ins. Co. v Ridgewood Diagnostic Lab. LLC</b>
2022 NY Slip Op 31816(U)
June 6, 2022
Supreme Court, New York County
Docket Number: Index No. 652301/2021
Judge: Frank P. Nervo
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. FRANK NERVO PART 04

*Justice*

-----X

COUNTRY-WIDE INSURANCE COMPANY,

Plaintiff,

- v -

RIDGEWOOD DIAGNOSTIC LABORATORY LLC A/A/O  
VEGA MELISSA C,

Defendant.

-----X

INDEX NO. 652301/2021

MOTION DATE 04/07/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 11, 12, 13, 14, 15, 16

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

Petitioner seeks to vacate the arbitrator's award, affirmed by the master arbitrator's award, on the basis that the insurance policy at issue was exhausted, the award required petitioner to pay claims above the policy limits, and the arbitrators exceed their power and rendered and imperfect award. Respondent opposes.

CPLR § 7511 provides that within 90 days of service of an arbitrator's award, a party may seek to vacate the award where the party's rights were prejudice by (i.) corruption or fraud, (ii) partiality of the arbitrator, (iii) an arbitrator acting in excess of their authority or imperfectly executing their authority such that the final award did not address the subject of the arbitration

proceedings, or (iv) by the arbitrator's failure to follow the procedures of Article 75 of the CPLR. Likewise, where a strong public policy is violated by the award or the award is irrational, vacatur is proper (*In Re Falzone (New York Cent. Mut. Fire Ins. Co.)*, 15 NY3d 530 [2010]). These grounds are exclusive and narrowly applied, "Courts are reluctant to disturb the decisions of arbitrators lest the value of this method of resolving controversies be undermined" (*Goldfinger v. Lisker*, 68 NY2d 225 [1986]; see also *Geneseo Police Benevolent Assn. v. Village of Geneseo*, 91 AD2d 858 [4th Dept 1982] *aff'd* 59 NY2d 726 [1983]). Consequently, errors of law or fact do not form a basis to vacate an arbitrator's award (*Wien & Malkin LLP v. Helmsley-Spear, Inc.*, 6 NY3d 471 [2006]; *Transport Workers' Union of Am., Local 100, AFL-CIO*, 6 NY3d 332 [2005]). "An arbitration award must be upheld when the arbitrator offer[s] even a barely colorable justification for the outcome reached" (*Susan D. Settenbrino, P.C. v. Barroga-Hayes*, 89 AD3d 1094 [2d Dept 2011] quoting *Wien & Malkin LLP v. Helmsley-Spear, Inc.*, 6 NY3d at 479 [internal quotation removed]). Simply put, it is well established that an arbitrator's award is largely unreviewable by this Court (*In re Falzone*, 15 NY3d at 534).

Here, the arbitrator's award was consistent with the evidence and not otherwise irrational or arbitrary. The arbitrator found that respondent made a

prima facie showing of entitlement to no-fault benefits, proving: the timely submission of statutory claim forms, the amount of the loss, and that payment of such claims was overdue. The arbitrator thus found the burden shifted to petitioner-insurer to establish the services were not medically necessary and further found that petitioner-insurer failed to meet this burden. These determinations find ample support in the record and are therefore not arbitrary nor capricious.

To the extent that petitioner alleges the arbitrator and master arbitrator's award is marred by mistakes of law, it is well settled that "Courts are reluctant to disturb the decisions of arbitrators lest the value of this method of resolving controversies be undermined" (*Goldfinger v. Lisker*, 68 NY2d 225 [1986]; see also *Geneseo Police Benevolent Assn. v. Village of Geneseo*, 91 AD2d 858 [4th Dept 1982] *aff'd* 59 NY2d 726 [1983]). Consequently, while a master arbitrator enjoys the authority to correct a mistake in law or fact by a lower arbitrator (*Matter of Allstate Ins. Co. v. Wilen*, 111 AD3d at 824), the Court does not enjoy similar authority to correct errors of law or fact by the master arbitrator (*Wien & Malkin LLP v. Helmsley-Spear, Inc.*, 6 NY3d 471 [2006]; *Transport Workers' Union of Am., Local 100, AFL-CIO*, 6 NY3d 332 [2005]). Accordingly, the Court declines to review the master arbitrator's award for a mistake in law or fact.

Alternatively, assuming *arguendo* the Court were to reach the issue, the Court would find the arbitrator's award correctly applied the law and facts of this matter, finding that petitioner-insurer failed to meet its burden of establishing the drug screening testing at issue was not medically necessary, as the report relied on by petitioner-insurer for that proposition is wholly silent as to drug screenings.

Finally, petitioner-insurer's claims that coverage was exhausted following the master arbitrator's affirmance of the arbitration award, and thus petitioner cannot be compelled to pay claims which have been thrice adjudicated to be proper, is without merit. If accepted, petitioner's argument incentivizes an insurer to engage in frivolous judicial gamesmanship whereby an insurer seeks Court review of properly rendered arbitration awards in order to exhaust coverage on other later claims and avoid payment of the earlier submitted provider's claim, which the insurer has been compelled to pay by the arbitrator. Furthermore, 11 NYCRR 65-3.15 requires that claims shall be made to service providers in the order in which each service was rendered, up to the policy limit. Petitioner's reliance on *Nyack Hosp. v. General Motors Acceptance Corp.* for the proposition that it need not pay these claims is misplaced, as that matter addressed premature claims awaiting further information prior to an insurer's

denial, not where an insurer has issued a denial which was determined to be improper by arbitration awards (8 NY3d 294 [2007]).

Accordingly, it is

ORDERED that the petition is denied in its entirety; and it is further

ORDERED that the arbitration award of September 10, 2020, and the master arbitrator’s award of January 7, 2021, are confirmed, pursuant to CPLR § 7511(e).

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

6/6/2022  
DATE

  
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HON. FRANK P. NERVO  
J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE