

Country-Wide Ins. Co. v SMS Therapy Supply Inc.

2022 NY Slip Op 31857(U)

June 9, 2022

Supreme Court, New York County

Docket Number: Index No. 655844/2021

Judge: Frank P. Nervo

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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**

<p>PRESENT: <u>HON. FRANK NERVO</u></p> <p align="center"><i>Justice</i></p> <p>-----X</p> <p>COUNTRY-WIDE INSURANCE COMPANY</p> <p align="center">Plaintiff,</p> <p align="center">- v -</p> <p>SMS THERAPY SUPPLY INC.,</p> <p align="center">Defendant.</p> <p>-----X</p>	<p>PART 04</p> <p>INDEX NO. <u>655844/2021</u></p> <p>MOTION DATE <u>10/06/2021</u></p> <p>MOTION SEQ. NO. <u>001</u></p> <p>DECISION, ORDER, AND JUDGMENT ON MOTION</p>
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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Petitioner seeks to vacate the award of a master arbitrator upholding the arbitrator’s award of \$988.00, after finding petitioner’s submissions untimely. Petitioner contends that vacatur of the master arbitrator’s award is warranted because the master arbitrator impermissibly upheld the arbitrator’s refusal to accept petitioner’s late filings. The application is unopposed.

To the extent that petitioner alleges the 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 mistake in law or fact. Alternatively, assuming *arguendo* the Court were to reach the mistake of law and facts issue raised by petitioner, it is beyond cavil that "A master arbitrator is empowered to apply the law to a given set of facts even if his or her conclusion differs from that of the arbitrator," and that the master arbitrator here acted within such authority (*Matter of Allstate Ins. Co. v. Wilen*, 111 AD3d 824 [2d Dept 2013] quoting *Matter of Empire Ins. Co. v. Lam*, 273 AD2d 469 [2d Dept 2000]). To the extent that petitioner alleges the master arbitrator's award was impacted by mistakes of facts, the master arbitrator's review of the sufficiency of evidence was properly limited to rational basis inquiry. Likewise, the arbitrator's rejection of untimely papers was proper, as a matter of law, and petitioner fails to cite any authority to the contrary (*Matter of Mercury Casualty Co. v. Helathmakers Medical Group, P.C.*, 67 AD3d 1017 [2d Dept 2009]; 11 NYCRR § 65-4.2).

Where a motion to vacate an arbitration award is denied, the Court must confirm the award (CPLR § 7511[e]; see also *Matter of Board of Educ. Of Ardsley Union Free School Dist., Town of Greenburgh v. Ardsley Congress of Teachers*, 78 AD2d 879 [2d Dept 1975]).

Accordingly, it is

ORDERED that the petition to vacate the master arbitrator's award dated July 12, 2021 is denied; and it is further

ORDERED that the master arbitrator's award of July 12, 2021, upholding the award in favor of respondent, is confirmed; and it is further

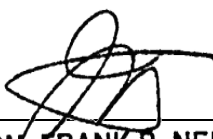
ORDERED that any requested relief not addressed herein has nevertheless been considered and is hereby denied; and it is further

ORDERED and ADJUDGED that respondent SMS THERAPY SUPPLY INC does recover from petitioner COUNTRY-WIDE INSURANCE COMPANY the amount of \$988.00, plus interest at the rate of 9% per annum from the date of July 12, 2021, 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 has execution therefor.

THIS CONSTITUTES THE DECISION, ORDER, AND JUDGMENT OF THE COURT.

6/9/2022
DATE


HON. FRANK P. NERVO

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION J.S.C.
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE