

**Country-Wide Ins. Co. v Medalliance Med. Health
Servs., Inc.**

2022 NY Slip Op 31878(U)

June 9, 2022

Supreme Court, New York County

Docket Number: Index No. 655957/2021

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 -

MEDALLIANCE MEDICAL HEALTH SERVICES, INC.,

Defendant.

-----X

INDEX NO. 655957/2021

MOTION DATE 10/13/2021

MOTION SEQ. NO. 001

**DECISION, ORDER, AND
JUDGMENT ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

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 \$2,716.94, after finding petitioner’s affiant lacked personal knowledge of the claimant’s non-appearance for examination. Petitioner contends that vacatur of the master arbitrator’s award is warranted because the master arbitrator impermissibly upheld the arbitrator’s finding. Respondent cross-moves to confirm the award and for reasonable attorney fees.

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 fact 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 here 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 a rational basis inquiry. "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]). Credibility determinations and the weight afforded to the evidence is within the purview of the arbitrator, not the master arbitrator or this Court (*Matter of Petrofsky (Allstate Ins. Co.)*, 54 NY2d 207 [1981]).

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 19, 2021 is denied; and it is further

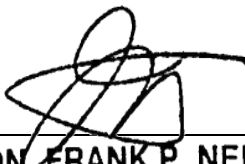
ORDERED and ADJUDGED that the cross-motion to confirm the master arbitrator's award of July 19, 2021, upholding the award in favor of respondent, is granted and the award of \$2,716.94 in favor of respondent is confirmed; and it is further

ORDERED that to the extent the cross-motion seeks reasonable attorney's fees, the Court finds counsel's fee of \$350.00/hour and 2.15 hours expended in this matter entirely reasonable and respondent shall recover \$752.50 in reasonable attorney's fees; and it is further

ORDERED and ADJUDGED that respondent MEDALLIANCE MEDICAL HEALTH SERVICES, INC. does recover from petitioner COUNTRY-WIDE INSURANCE COMPANY the amount of \$2,716.94, plus interest at the rate of 9% per annum from the date of July 19, 2021, as computed by the Clerk in the amount of \$ _____, together with costs and disbursements in the amount of \$ _____ as taxed by the Clerk, plus reasonable attorney's fees in the amount of \$752.50, for the total amount of \$ _____, and that the respondent has execution therefor; and it is further

[continued on following page]

ORDERED that any requested relief not addressed herein has nevertheless been considered and is hereby denied; and it is further THIS CONSTITUTES THE DECISION, ORDER, AND JUDGMENT OF THE COURT.

<u>6/9/2022</u> DATE			 HON. FRANK P. NERVO J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/> OTHER
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
	<input type="checkbox"/>	DENIED	<input type="checkbox"/> REFERENCE