

Matter of American Tr. Ins. Co. v GEICO Gen. Ins. Co.

2022 NY Slip Op 32221(U)

July 7, 2022

Supreme Court, New York County

Docket Number: Index No. 657000/2021

Judge: Shlomo Hagler

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This opinion is uncorrected and not selected for official publication.

The Arbitrator framed the “Summary of Dispute” as follows:

Geico is the Applicant and American Transit is the Respondent. This accident occurred in the Lincoln Tunnel. Applicant [GEICO] contends that while driving straight, Respondent rear-ended their vehicle. Respondent contends the claim was denied as the collision occurred [in state of] New Jersey and they should not be held accountable for damages for an accident that did not occur in New York.

The arbitrator seemingly rejected the Petitioner’s defense that the accident occurred in New Jersey as follows:

Although the jurisdiction of the accident *may* have been in New Jersey, Respondent did not file a proper affirmative defense so jurisdiction cannot be barred. (Italics added).

The thrust of Petitioner’s argument is that the Arbitrator exceeded his authority by failing to dismiss the subject claim based on lack of jurisdiction because the subject claim arises from a loss on July 9, 2020, that took place in the Lincoln Tunnel in the State of New Jersey. Respondent counters that Arbitrator rejected Petitioner’s argument as the only evidence that the accident occurred in New Jersey is an unsworn and unauthenticated Police Report from The Port Authority of NY & NJ, authored by an officer who did not witness the accident. Respondent points out that even Petitioner’s insured admitted in the Report of Motor Vehicle Accident (MV-104) that she “was driving W/B on Lincoln Tunnel *going to New Jersey* when my car engine started to crash...” (Italics added) as an indication that the accident did not occur in the state of New Jersey.

“While judicial review of arbitration awards is limited to the grounds set forth in CPLR 7511, an award that is the product of compulsory arbitration, such as the one at issue in this case, must satisfy an additional layer of judicial scrutiny—it must have evidentiary support and cannot be arbitrary and capricious” (*Matter of Liberty Mut. Fire Ins. Co. v. Global Liberty Ins. Co. of N.Y.*, 144 A.D.3d 1160, 1160–1161, 42 N.Y.S.3d 269 [internal quotation marks omitted]; see *Matter of Motor Veh. Acc. Indem. Corp. v. Aetna Cas. & Sur. Co.*, 89 N.Y.2d 214, 652 N.Y.S.2d 584, 674 N.E.2d 1349; *Matter of Allstate Ins. Co. v. Travelers Cos., Inc.*, 159 A.D.3d 982, 74 N.Y.S.3d 573). “Moreover, with 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’ ” (*Matter of Fiduciary Ins. Co. v. American Bankers Ins. Co. of Florida*, 132 A.D.3d 40, 46, 14 N.Y.S.3d 427, quoting *Matter of Shand [Aetna Ins. Co.]*, 74 A.D.2d 442, 454, 428 N.Y.S.2d 462).

In this matter, the Arbitrator may have made a mistake in the law that Petitioner was foreclosed from raising lack of jurisdiction because it did not properly file an affirmative defense. Normally, an arbitrator is precluded from identifying and considering an affirmative defense that is not pleaded by a party to the arbitration. Here, however, the issue before the arbitrator cannot be characterized as an affirmative defense, such as lack of coverage (see *New York Cent. Mut. Fire Ins. Co. v. Amica Mut. Ins. Co.*, 162 A.D.2d 1009, 557 N.Y.S.2d 801). *Fiduciary Ins. Co. v. American Bankers Ins. Co. of Florida*, 132 A.D.3d 40 (2d Dept 2015).

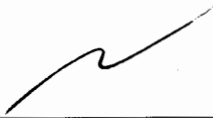
“ [E]ven assuming that the arbitrator might have misapplied applicable law ... the arbitrator's award was ... supported by a ‘reasonable hypothesis’ and was not contrary to what could be fairly described as settled law” (*Matter of State Farm Mut. Auto. Inc. Co. v. Lumbermens Mut. Cas. Co.*, 18 A.D.3d 762, 763, 796 N.Y.S.2d 112, quoting *Matter of Motor*

Veh. Acc. Indem. Corp. v. Aetna Cas. & Sur. Co., 89 N.Y.2d at 224, 652 N.Y.S.2d 584, 674 N.E.2d 1349). Here, there was no objective evidence in the record below (or even now) that resolves the open question as to whether the accident happened in the New York or New Jersey side of the Lincoln Tunnel. Inasmuch as the Arbitrator seemingly rejected the unpersuasive and unauthenticated Police Report which was the only evidence that the accident occurred in New Jersey side of the Lincoln Tunnel, it cannot be said the Arbitrator's Awards were unsupported by a "reasonable hypothesis". (*Id.*)

Accordingly, it is

ORDERED and ADJUDGED, that the petition to vacate the Awards is denied; and it further

ORDERED and ADJUDGED, that cross-petition is granted¹ to the extent of confirming the Arbitrator's Awards for \$7,390.22, \$6,981.65, and \$2,975.08, as money judgments in favor of Respondent, GEICO GENERAL INSURANCE COMPANY as against Petitioner AMERICAN TRANSIT INSURANCE COMPANY, with interest thereon from October 5, 2021, the date of the issuance of the Awards. The clerk shall enter judgment accordingly.

<p><u>7/7/2022</u> DATE</p>		 <hr/> SHLOMO HAGLER, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED
APPLICATION:	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE

¹ This is a conditional order in that Respondent must first discontinue the three prior actions pending in Queens County Civil Court Index Number 000019/22, Queens County Civil Court Index Number 000021/22, and Queens County Civil Court Index Number 000020/22.