

Country-Wide Ins. Co. v Peony Acupuncture P.C.

2022 NY Slip Op 32281(U)

July 12, 2022

Supreme Court, New York County

Docket Number: Index No. 654571/2021

Judge: William Perry

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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. WILLIAM PERRY PART 23

Justice

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COUNTRY-WIDE INSURANCE COMPANY

Petitioner,

- v -

PEONY ACUPUNCTURE P.C.,

Respondent.

-----X

INDEX NO. 654571/2021

MOTION DATE 10/15/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 15, 16, 17, 26, 27 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

In this Article 75 proceeding, Petitioner Country-Wide Insurance Company seeks the vacatur of a no-fault arbitration award dated February 11, 2021 and the master arbitration award, which affirmed the former, dated April 26, 2021, which found in favor of Respondent Peony Acupuncture, awarding it \$2,305.59. The Petition is fully submitted and denied for the reasons that follow.

Background

After being involved in a motor vehicle accident on September 4, 2017, Barrett Price, who was a passenger in a vehicle insured by Petitioner, sought and received healthcare services (the “services”) from Respondent, which submitted medical bills to Petitioner for reimbursement. (NYSCEF Doc No. 1, Petition, at ¶¶ 3-6.)

A first round of arbitration commenced on June 24, 2020 before Arbitrator Hennessy, who, via award dated July 21, 2020, held that Petitioner’s IME report was insufficient to prove that the services were unreasonable/unnecessary. (NYSCEF Doc No. 3.) Arbitrator Hennessy awarded to Respondent \$3,202.64 of the \$4,247.55 which it sought. (*Id.* at 3.) On appeal, Master Arbitrator

Alfred Weiner found that Petitioner had established that the policy benefits had been exhausted, an issue permitted to be raised for the first time on appeal, and remanded the matter to Arbitrator Hennessy. (NYSCEF Doc No. 6.) Upon remand, Petitioner argued that only \$363.33 remained on the \$50,000.00 policy as of December 7, 2020. (NYSCEF Doc No. 7, Arb. Award, at 8.)

Arbitrator Hennessy, however, noted that at least \$2,305.59 of the policy remained as of the hearing she conducted on June 24, 2020, and that the \$3,202.64 she awarded to Respondent on July 21, 2020 became due on that same date, although Petitioner inexplicably chose to pay three other medical bills totaling \$1,941.93 instead, which exhausted the policy. (*Id.* at 9-11.) In her well-reasoned award, she held that Petitioner could not rely upon “an after-the-fact exhaustion defense” and that it was obligated to pay the \$2,305.59 amount which was available on the date of the award. (*Id.* at 11-15.)

Arbitrator Hennessy’s February 11, 2021 was upheld by Master Arbitrator Richard Ancowitz on April 26, 2021. (NYSCEF Doc No. 10.)

Discussion

It is well settled that a party seeking to vacate an arbitration award carries a “heavy burden.” (*Scollar v Cece*, 28 AD3d 317 [1st Dept 2006], citing *Matter of New York State Correctional Officers & Police Benevolent Assn. v State of New York*, 94 NY2d 321,326 [1999].) An arbitration award must be upheld when the arbitrator “offers even a barely colorable justification for the outcome reached.” (*Wien & Malkin LLP v Helmsley-Spear, Inc.*, 6 NY3d 471,479 [2006].)

When a court is asked to review an arbitrator's decision, made in a compulsory no-fault arbitration proceeding, the court must affirm the award if there is evidentiary support and the award was neither arbitrary nor capricious. (*Motor Vehicle Accident Indemnification Corp. v Aetna Cas. & Sur.*, 89 NY2d 214, 220-222 [1996].) It is well settled that an “arbitrary action is without sound

basis in reason and is generally taken without regard to facts.” (*Pell v Board of Educ of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 231 [1974].) These standards govern both a master arbitrator's review of the original arbitration award and the court's review of the master arbitrator's award. (*Petrofsky v Allstate Ins. Co.*, 54 NY2d 207, 211 [1981].)

Here, Petitioner advances the same arguments made during its second round of arbitration before Arbitrator Hennessy, namely, that it should not be required to pay in excess of the amount of the policy. (Petition at 5-9.) The court, however, finds that Arbitrator Hennessy, after considering the relevant evidence in the record, namely, the dates of claims and payment ledgers, soundly rejected these arguments in a well-reasoned analysis. Petitioner fails to respond to Hennessy's holding that Petitioner cannot rely upon an “after-the-fact exhaustion defense” and merely argues, again, that the policy is exhausted.

Finally, Respondent is entitled to recover attorneys' fees for services rendered in this appeal from a master arbitration, which “shall” be fixed by this court. (*Country-Wide Ins. Co. v TC Acupuncture P.C.*, 179 AD3d 414, 414 [1st Dept 2020], *citing* 11 NYCRR 65-4.10[j][4].) Therefore, Respondent's requested attorneys' fees in the amount of \$1,365.00 is granted. (NYSCEF Doc No. 25.) It is hereby

ORDERED and ADJUDGED that the Petition to vacate the arbitration awards is denied and the Petition is dismissed; and it is further

ORDERED and ADJUDGED that, pursuant to CPLR 7511[e], the award rendered in favor of Respondent and against Petitioner is confirmed; and it is further

ORDERED and ADJUDGED that Respondent recover from Petitioner Country-Wide Insurance Company the amount of \$2,305.59, plus interest at the statutory rate of 2% per month

from June 4, 2019 until the date of this order, as computed by the Clerk, together with costs and disbursements, and attorneys' fees in the amount of \$1,365.00, for a total amount of \$ _____, and that Respondent has execution therefor.

7/12/2022
DATE


WILLIAM PERRY, J.S.C.

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
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE