Matter of American Tr. Ins. Co. v North Shore Family Chiropractic, P.C.
2022 NY Slip Op 32663(U)
July 21, 2022
Supreme Court, Kings County
Docket Number: Index No. 521887/21
Judge: Peter P. Sweeney
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 73
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IN THE MATTER OF THE ARBITRATION OF
CERTAIN CONTROVERSIES BETWEEN

AMERICAN TRANSIT INSURANCE COMPANY,

Petitioner,

-against-

NORTH SHORE FAMILY CHIROPRACTIC, P.C.,
A/A/O CHARLES NICO

Respondent.
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Index No.: 521887/21
Motion Date: 4-11-22
Mot. Seq. No.: 1

DECISION/ORDER

Upon the following papers, listed on NYSCEF as document numbers 1-15 were read on this petition:

In this proceeding commenced pursuant to CPLR article 75, the petitioner, AMERICAN TRANSIT INSURANCE COMPANY, seeks to vacate an award of a master arbitrator (AAA Assessment # 99-20-1175-8726) which affirmed, its entirety, an award of a lower arbitrator in the amount of $4,370.70.

The arbitration at issue involved respondent's claim for assigned first-party no-fault benefits for medical treatment and medical exams for dates of service 07/18/2018 - 12/27/2018 totaling $4,717.38. The amount was amended at the arbitration hearing to $4,370.70 to reflect the correct fee schedule amount. The petitioner had denied the claim on the ground that the assignor's injuries were not causally related to the accident. In support of its lack of coverage defense, the respondent relied primarily on the EUO transcript of the alleged "eligible injured person" (EIP) and the biomechanical report of Dr. Omid Komari, who opined that the accident was not the cause of the EIP's injuries.

In finding for the respondent, the arbitrator stated:

> I have reviewed the EUO transcript in its entirety and I do not find sufficient evidence within the EIP's testimony that would give rise to establishing a basis for Respondent's denial. As for the opinion of the

> Respondent's accident reconstruction expert, I find it is insufficient to establish that the EIP's injuries were not causally related to the underlying accident. Unless an injury for which an EIP is treated is so clearly unrelated to the biomechanics of a motor vehicle accident, a low-impact study (standing alone without any accompanying medical evidence -- which does not explain how the EIP's injuries are causally incompatible with the subject accident) does not suffice to prove prima facie that the injuries were not causally related to the accident. *Bronx Radiology, P.C. v. New York Cent. Mutual Fire Ins. Co.*, 17 Misc.3d 97, 847 N.Y.S.2d 313 (App. Term 1st Dept. 2007).
>
> In this case, I find the Respondent has not submitted sufficient evidence to establish its defense that the treatment was not causally related to the MVA.

The Master Arbitrator affirmed the award.

The standard applicable to judicial review of a compulsory arbitration proceeding is whether the 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. Ins. Co. v. Lumbermens Mut. Cas. Co.*, 18 AD3d 762, 763 [2005], citing *Matter of Motor Veh. Acc. Indem. Corp. v. Aetna Cas. & Sur. Co.*, 89 N.Y.2d 214, 224 [1996]; *see Matter of Hanover Ins. Co. v. State Farm Mut. Auto. Ins. Co.*, 226 A.D.2d 533, 534 [1996]; *Matter of Adams v. Allstate Ins. Co.*, 210 A.D.2d 319, 320 [1994]).

In *Bronx Radiology, P.C. v. New York Cent. Mut. Fire Ins. Co.*, 17 Misc. 3d 97, 99, 847 N.Y.S.2d 313, 315 (App. Term 2007), the Court held:

> While generally speaking, accident reconstruction evidence may often prove useful in explaining how an accident occurred, its probative value on issues related to causation is limited unless amplified by a meaningful medical assessment of the claimed injuries. This is certainly true in the first party no-fault scenario, where an insurer disclaiming coverage has the burden of establishing that "the medical condition for which the assignor was treated was not related to the accident at all" (*Mt. Sinai v. Triboro Coach*, 263 A.D.2d at 18–19, 699 N.Y.S.2d 77). Whether a causative nexus exists between an accident and injury "cannot be resolved without recourse to the medical facts" (*id.* at 19, 699 N.Y.S.2d 77).

The lower arbitrator relied on this precedent and found for NORTH SHORE FAMILY CHIROPRACTIC, P.C. A/A/O CHARLES NICO. The master arbitrator affirmed.

The Court finds that the lower and master arbitration awards were supported by a reasonable hypothesis' and was not contrary to what could be fairly described as settled law. The determinations of the master and lower arbitrators had evidentiary support and a rational basis (*see* 11 NYCRR 65-1.10[a][2]; *Matter of Brijmohan v. State Farm Ins. Co.*, 92 N.Y.2d 821, 823, 677 N.Y.S.2d 55, 699 N.E.2d 414; *Countrywide Ins. Co. v. Sawh,* 272 A.D.2d 245, 245, 708 N.Y.S.2d 862).

Even if the petitioner is correct in its assessment of what constitutes well settled law, "'[i]t is not for [the court] to decide whether the [master] arbitrator erred [in applying the applicable law]' " (*Matter of Allstate Ins. Co. v. Westchester Med. Group, M.D.*, 125 A.D.3d at 650, 3 N.Y.S.3d 81, quoting *Matter of Falzone [New York Cent. Mut. Fire Ins. Co.],* 15 N.Y.3d 530, 535, 914 N.Y.S.2d 67, 939 N.E.2d 1197; *Transport Workers' Union of Am., Local 100, AFL-CIO,* 6 N.Y.3d at 336, 812 N.Y.S.2d 413, 845 N.E.2d 1243 ["(C)ourts are obligated to give deference to the decision of the arbitrator. This is true even if the arbitrator misapplied the substantive law...." (citations omitted)]). Thus, petitioner's contention that the master misapplied well settled law is not a basis to vacate the award.

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is **DENIED** and the proceeding is **DISMISSED,** and it is further

ORDERED that the awards are confirmed and SHORE FAMILY CHIROPRACTIC, P.C., A/A/O CHARLES NICO may enter judgment against the petitioner for i. $40.00 filing fee per 11 NYCRR 65-3.13(a)(2)(3) and 11 NYCRR 65-4.5(s)(1); plus ii. $4370.70 principal; plus iii. statutory interest at the rate of 2% per month from 8/18/2020 as awarded by the lower arbitrator; plus iv. statutory attorney's fees to Respondent's counsel of 20% of principal plus interest thereon, as awarded by the lower arbitrator under 11 NYCRR 65-4.6(d); plus v. $65.00 master arbitration attorney's fees to Respondent's counsel as awarded by the master arbitrator under 11 NYCRR 65-4.10(j); plus vi. $840.00 statutory attorney's fees to Respondent's counsel

under 11 NYCRR 65- 4.10(j)(4) for opposing this Petition; plus vii. costs and disbursements of this action.

This constitutes the decision and judgment of the Court.

Dated: July 21, 2022

PPS

PETER P. SWEENEY, J.S.C.

Note: This signature was generated electronically pursuant to Administrative Order 86/20 dated April 20, 2020