

Country-Wide Ins. Co. v Luminary Acupuncture, P.C.
2022 NY Slip Op 32738(U)
June 27, 2022
Supreme Court, New York County
Docket Number: Index No. 652142/2022
Judge: Arlene Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE BLUTH PART 14

Justice

-----X

COUNTRY-WIDE INSURANCE COMPANY

Petitioner,

- v -

LUMINARY ACUPUNCTURE, P.C.,

Respondent.

-----X

INDEX NO. 652142/2022

MOTION DATE 06/14/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-15
were read on this motion to/for VACATE - AWARD.

The petition to vacate an arbitration award is denied.

Background

Petitioner alleges that a lower arbitrator's decision awarding respondent no-fault benefits exceeded his powers because the award ignored the fact that the insurance policy was exhausted. It argues that the policy exhaustion argument can be raised at any time, whether or not it is raised in the initial lower arbitration. Here, there was an initial decision by a lower arbitrator followed by an affirmance from a Master Arbitrator. Petitioner insists that the amount in dispute exceeds the amount remaining in the policy and points to an affidavit from its No-Fault Arbitration/Litigation Supervisor.

In opposition, respondent argues that the Master Arbitrator's decision did not violate public policy and was not irrational. It points out that the policy exhaustion claim was not raised at the hearing and the lower arbitrator sided with respondent. Respondent maintains that only before the Master Arbitrator was the policy exhaustion argument raised. It maintains that

petitioner waived the right to raise this argument by not asserting it before the lower arbitrator. Respondent contends that to permit petitioner to raise the policy exhaustion argument only before the Master Arbitrator would frustrate the entire no-fault arbitration system.

In reply, petitioner reiterates that a policy exhaustion argument can be raised at any time and that coverage cannot be created where it does not exist.

Discussion

“CPLR 7511 provides just four grounds for vacating an arbitration award, including that the arbitrator exceeded his power (CPLR 7511[b][1][iii]), which “occurs only where the arbitrator's award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power. Mere errors of fact or law are insufficient to vacate an arbitral award. Courts are obligated to give deference to the decision of the arbitrator, even if the arbitrator misapplied the substantive law in the area of the contract (*NRT New York LLC v Spell*, 166 AD3d 438, 438-39, 88 NYS3d 34 [1st Dept 2018] [internal quotations and citations omitted]).

The Court denies the petition. There is no basis to disturb either of the arbitration awards at issue here. The Master Arbitrator noted that the policy exhaustion argument was not raised in the lower arbitration and that his role, as Master Arbitrator, is *not* to perform a de novo review (NYSCEF Doc. No. 6 at 2-3). While petitioner is correct that an arbitrator's award cannot direct payment in excess of a no-fault insurance policy's monetary limit (*see Matter of Brijmohan v State Farm Ins. Co.*, 92 NY2d 821, 822, 677 NYS2d 55 [1998]), the issue here (unlike *Brijmohan*) is not a mistake about the amount of the policy. Rather, this is a situation where petitioner now suddenly claims that the policy is exhausted. As respondent points out, to credit

petitioner's belated policy exhaustion argument would frustrate the entire purpose of the no-fault arbitration process.

Petitioner could refuse to pay a claim, lose on the merits at an arbitration and then claim it now does not have to pay because the policy is now exhausted due to payments that were made in the interim. While petitioner was entitled to challenge the requested reimbursement, that does not mean it can avoid making the payment here by making the process take longer. In other words, the entire arbitration process would make little sense if petitioner could disclaim coverage, lose that fight at an arbitration but still prevail because petitioner decided to challenge the claim and drag it out long enough so other providers used up the policy.

Accordingly, it is hereby

ORDERED that the petition to vacate the arbitration award is denied; and it is further

ORDERED that pursuant to CPLR 7511(e) the award is confirmed and the Clerk is directed to enter judgment in favor of respondent and against petitioner in the amount of \$1,632.40 plus interest as directed in the arbitration award and applicable no-fault regulations which is two-percent per month (11 NYCRR 65-3.9) from April 23, 2019, plus \$40 as directed by the lower arbitrator, plus \$195 in legal fees as directed by the Master Arbitrator, plus the \$75 filing fee as directed by the Master Arbitrator, and the Clerk shall enter said judgment along with costs and disbursements upon presentation of proper papers therefor.

6/27/2022

DATE

CHECK ONE:

☒

CASE DISPOSED

☐

GRANTED

☒

DENIED

☐

SETTLE ORDER

☐

INCLUDES TRANSFER/REASSIGN

☐

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE:

ARLENE BLUTH, J.S.C.