

Country-Wide Ins. Co. v Prometheus Imaging LLC
2022 NY Slip Op 34095(U)
December 2, 2022
Supreme Court, New York County
Docket Number: Index No. 653163/2022
Judge: Erika M. Edwards
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ERIKA M. EDWARDS

PART 10M

Justice

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COUNTRY-WIDE INSURANCE COMPANY,

Petitioner,

- v -

PROMETHEUS IMAGING LLC, TITAN DIAGNOSTIC
IMAGING SERVICES, INC a/a/o MIGUEL A LEAL,

Respondents.

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INDEX NO. 653163/2022MOTION DATE 08/31/2022MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17

were read on this motion to/for

VACATE - DECISION

Upon the foregoing documents, the court denies Petitioner Country-Wide Insurance Company's ("Petitioner") Petition to Vacate a Master Arbitration Award, dated June 6, 2022.

Petitioner now moves to vacate a No-Fault Master Arbitrator's decision, dated June 6, 2022, pursuant to CPLR 7511(b)(1)(i), (iii) and (iv). Petitioner argues in substance that the lower Arbitrator exceeded his powers, that the award was so imperfectly executed that a final and definite award upon the subject matter submitted was not made and that the Master Arbitrator erred in affirming the decision.

This matter involves an accident which occurred on April 27, 2021, involving a moped operated by Respondent Miguel A. Leal ("Leal") and insured by Petitioner colliding with a vehicle. Leal received healthcare services by Respondents Prometheus Imaging LLC ("Prometheus"), Titan Diagnostic Imaging Services, Inc ("Titan") (collectively, "Respondents").

Petitioner argues in substance that it had submitted evidence that Leal's moped was a limited use Class B motorcycle, which was not covered by Petitioner's automobile personal

injury policy. Class A and B limited use motorcycles are excluded from first-party no-fault benefits, but Class C limited use motorcycles, which have a maximum speed of not more than 20 miles per hour, are entitled to no-fault benefits.

The lower Arbitrator found that the motorcycle was a Class C limited use motorcycle because Petitioner failed to submit sufficient proof to demonstrate that the moped was a Class A or B limited use motorcycle. The lower Arbitrator rendered an award in favor of Respondents in the amount of \$2,047.46. Petitioner appealed to the Master Arbitrator and argued in substance that the lower Arbitrator rendered the decision without knowing the maximum speed of the motorcycle, the award was not rationally based upon the evidence presented, and it was arbitrary and capricious. The Master Arbitrator confirmed the award and found that the lower Arbitrator's review of the facts was not incorrect as a matter of law. Petitioner now appeals to this court and argues that the lower Arbitrator exceeded her power and that the Master Arbitrator erred in affirming the award.

Respondents filed an Answer with Affirmative Defenses, but failed to specifically address Petitioner's arguments, failed to submit evidence to rebut Petitioner's claims, and failed to provide support for their Affirmative Defenses in opposition to the Petition.

Pursuant to CPLR 7511(b)(1), an arbitration award shall be vacated by a party who participated in the arbitration or who was served with a notice of intention to arbitrate if the court finds that the rights of a party were prejudiced by "(i) corruption, fraud or misconduct in procuring the award;" (iii) an arbitrator "exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made;" or (iv) failure to follow the applicable procedure set forth in the CPLR, unless the party moving to vacate the

award continued with the arbitration with notice of the defect, without objecting to the defect (CPLR 7511[b][1][i], [iii], and [iv], respectively).

An arbitration award made after all parties have participated “will not be overturned merely because the arbitrator committed an error of fact or of law” (*Motor Vehicle Accident Indemnification Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223 [1996]). To be upheld, a compulsory arbitration award must have evidentiary support or other basis in reason, as may be appropriate, and appearing in the record, and cannot be arbitrary and capricious (*id.*; *Mt. St. Mary’s Hosp. of Niagara Falls v Catherwood*, 26 NY2d 493, 508, [1970]).

Here, despite that fact that Respondents failed to sufficiently oppose Petitioner’s arguments, the court must determine whether Petitioner met its initial burden to vacate the award pursuant to CPLR 7511(b)(1). The court finds that Petitioner failed to meet its initial burden in that Petitioner failed to demonstrate that the Master Arbitrator erred in affirming the lower Arbitrator’s award, that the Arbitrator exceeded his or her power, that the decision was irrational and not supported by the evidence, or that it was arbitrary and capricious.

In the lower Arbitration decision, the lower Arbitrator stated in substance that the Applicant established its prima facie case of entitlement to reimbursement, but that once the burden shifted to Country-Wide, Country-Wide failed to meet its burden of establishing that the Assignor is ineligible for No-Fault benefits. The lower Arbitrator found that Country-Wide failed to prove its defense that Leal was operating a ‘motorcycle’ at the time of the accident, which was excluded from coverage. He found that Country-Wide failed to submit any evidence to show that Leal was driving a motorcycle or that it was a Class A or B limited use motorcycle, and not a Class C limited use motorcycle. Therefore, he awarded the Applicant \$2,047.46.

The court finds that Petitioner failed to demonstrate that the Master Arbitrator’s decision to affirm the award was arbitrary and capricious, that the Master Arbitrator exceeded his or her power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made, or for any other reason set forth in CPLR 7511(b)(1).

Therefore, the court denies the relief requested in the Petition and dismisses it.

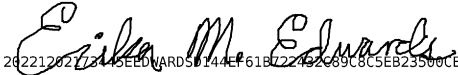
The court has considered any additional arguments raised by the parties, but not specifically addressed herein, and the court denies all requests for relief, not expressly granted herein.

As such, it is hereby

ORDERED that the court denies the relief requested in the Petition and dismisses the Petition against the Respondents Prometheus Imaging LLC and Titan Diagnostic Imaging Services, Inc; and it is further

ORDERED that the court directs the Clerk of the Court to enter judgment in favor of the Respondents Prometheus Imaging LLC and Titan Diagnostic Imaging Services, Inc as against the Petitioner Country-Wide Insurance Company.

This constitutes the Decision and Order of the Court.


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<u>12/2/2022</u> DATE			<u>ERIKA M. EDWARDS, J.S.C.</u>
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE