Matter of Mendoza Chiropractic Off. PC v Country Wide Ins. Co.
2023 NY Slip Op 30276(U)
January 11, 2023
Supreme Court, Kings County
Docket Number: Index No. 500715/22
Judge: Ingrid Joseph
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At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 11th day of January 2023.

PRESENT: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS

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In the Matter of MENDOZA CHIROPRACTIC OFFICE PC a/a/o CLAUDIA RODRIQUEZ,

Petitioner,

-against-

COUNTRY WIDE INSURANCE COMPANY,

Respondent.

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DECISION AND JUDGMENT

Index No. 500715/22

Mot. Seq. No. 1
(Proceeding No. 1)

In the Matter of MENDOZA CHIROPRACTIC OFFICE PC a/a/o CLAUDIA RODRIQUEZ,

Petitioner,

-against-

COUNTRY WIDE INSURANCE COMPANY,

Respondent.

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DECISION AND JUDGMENT

Index No. 500722/22

Mot. Seq. No. 1
(Proceeding No. 2)

The following e-filed papers read herein: NYSCEF Doc. Nos.:

(Proceeding No. 1)
Notice of Petition, Petition, Affirmations (Affidavits), Memoranda of Law, and Exhibits Annexed 1-9
Affirmation in Opposition and Exhibits Annexed 12-14
Reply Affirmation 15

(Proceeding No. 2)
Notice of Petition, Petition, Affirmations (Affidavits), Memoranda of Law, and Exhibits Annexed 1-9
Affirmation in Opposition and Exhibits Annexed 12-15

In each of the two separately commenced CPLR article 75 proceedings (which have been consolidated for joint disposition), Petitioner Mendoza Chiropractic Office PC, as assignee of Claudia Rodriguez ("Rodriguez"), seeks an order: (1) vacating the master arbitration awards, pursuant to CPLR 7511 (b) (1) (iii); (2) upon vacatur, confirming the corresponding no-fault ("NF") arbitration awards; and (3) awarding petitioner attorney's fees, pursuant to 11 NYCRR 65-4.10 (j) (4). Respondent Country-Wide Insurance Company ("Respondent") objects to each petition, contending that both master arbitration awards were correct.

On September 19, 2018, Claudia Rodriguez allegedly sustained back injuries when the car she was driving hit a pothole. Rodriguez received chiropractic treatment from Petitioner which received a portion of its compensation for the services provided through Rodriguez's $50,000 PIP (first party) coverage with Respondent. Rodriguez's treatment included six separate sessions of neurostimulation ("neuro-stim treatment"). Prior to commencing such treatment, Rodriguez appeared for two Independent Medical Examinations, one with a chiropractor and the other with a neurologist, both arranged by Respondent. Both examiners concluded that neuro-stim treatment was not medically necessary. Rodriguez underwent all six neuro-stim sessions notwithstanding the examiners' conclusions. Petitioner then submitted six separate claims to Respondent, totaling $9,535.26. Respondent timely denied each claim for neuro-stim treatment for lack of medical necessity ("denied claims"), at this time the $50,000 coverage limit on Rodriguez's policy had not been exhausted.

On September 13, 2019, Petitioner commenced mandatory NF arbitration proceedings[1] before the American Arbitration Association to recover mandatory NF benefits for Rodroguez's neuro-stim sessions. The initial proceeding concerned the first three treatments, and Petitioner

[1] AAA Case Numbers 17-19-1141-8503 and 17-19-1141-8475 for the first and second denied claims respectively.

pursued payment for the second series of the three neuro-stim sessions in a separate proceeding. Petitioner sought payment of $4,767.63 in each arbitration, totaling $9,535.26. Both arbitrations were held at the NF arbitration decision-making level and thereafter, at the master arbitration level. At each decision-making level, the same AAA arbitrators – Debbie Kotin Insdorf, Esq., as the NF arbitrator, and Jonathan Hill, Esq., as the master arbitrator, respectively – heard and considered the two series of denied claims separately.

By separate Arbitration Awards, each dated October 11, 2021 (the "NF Arbitration Awards"), the initial NF arbitrator rejected Respondent's medical necessity defense, ruling that it failed to establish, as of the date of the IMEs, that the neuro-stim treatments were not medically necessary, and that in any event, Petitioner's submissions were sufficient to refute the examiners' findings. Accordingly, the NF arbitrator awarded Petitioner, by separate NF arbitration awards, the full billed amount for each series of denied claims for the total (with both awards combined) of $9, 535.26, together with interest, attorney's fees, and costs.

Thereafter, Respondent appealed both NF arbitration awards to the Master Arbitrator, wherein Respondent raised the defense of policy exhaustion for the first time in the arbitration proceedings. Respondent contended that *each* NF arbitration award was "arbitrary capricious and incorrect as a matter of law" because each award, *when combined with the other NF arbitration award,* exceeded the then-available policy limit.[2] In addition (as was the instance before the initial NF arbitrator), Respondent reiterated that the neuro-stim treatments were not medically necessary.

[2] *See* Respondent's letter submissions, dated December 15, 2021 and November 24, 2021, in proceeding Nos. 1 and 2, respectively (both part of the e-filed documents under NYSCEF Doc No. 6.). The $9, 535.26 in the same combined NF arbitration awards exceeded the then-outstanding balance on the police after payment of other medical claims, with such balance being either $9,520.63 (Petitioner's position) or $9,484.84 ("Respondent's position).

By separate Master Arbitration Awards, each dated January 2, 2022 (the "Master Arbitration Awards"), the Master Arbitrator, while rejecting Respondent medical necessity defense, accepted its newly raised defense of policy exhaustion.[3] After noting some confusion in case law as to whether the insurer could be required to pay in excess of the policy limit on the previously denied (but subsequently upheld) claims in arbitration, the Master Arbitrator vacated both NF arbitration awards and remanded both proceedings to the NF arbitrator for consideration of Respondent's newly raised defense of policy exhaustion. Specifically, the Master Arbitrator noted, "the determination as to whether and/or how much if any reimbursement is due {petitioner] in the instant matter and possibly in the linked matter must be determined by the [NF] arbitrator who was assigned to this matter initially." [4]

Petitioner elected to commence the instant CPLR article 75 proceedings in lieu of resorting to the remand arbitration (one proceeding per master arbitration award). As noted above, Petitioner seeks to vacate the master arbitration awards and, upon vacatur, to confirm the NF arbitration awards, as well as for ancillary relief in the form of attorney's fees. Petitioner maintains that the master arbitration awards were arbitrary, capricious, and were so imperfectly executed that a final and definite award on the subject submitted was not made. Respondent opposes on the ground that the NF arbitrator would be in the best position on remand to address its defense of policy exhaustion. Both petitions (held jointly) were fully submitted on May 5, 2022, with the Court reserving decision.

Pursuant to CPLR 7511 (b) (1) (iii), a court may vacate an arbitration award if the 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." "[V]acatur of an award pursuant to this provision is

[3] *See* Master Arbitration Awards, dated January 2, 2022 (e-filed under NYSCEF Doc. No. 5).
[4] *See* Master Arbitration Awards at pages 2-3.

warranted . . . if it . . . is irrational" (*Matter of O'Neill v GEICO Ins. Co.*, 162 AD3d 776, 777 [2d Dept 2018] [internal quotation marks and citations omitted], *lv denied* 32 NY3d 912 [2018]). "An award is irrational when there is no proof whatever to justify the award" (*Matter of Vintage Flooring & Tile, Inc. v DCM of NY, LLC*, 123 AD3d 731, 732 [2d Dept 2014]). Further, where, as here, an arbitration award is the product of compulsory arbitration, the award 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 Glob. Liberty Ins. Co. of N.Y.*, 144 AD3d 1160, 1161 [2d Dept 2016]).

Applying these principles, in addressing the first proceedings herein (Index No. 500715/2022), the Court finds that the master arbitrator's concurrent vacatur of both NF arbitration awards was irrational, arbitrary and capricious. It is undisputed that at the time of the NF arbitration awards, the balance under the policy was, and has remained, sufficient to pay *either* (but not both) of the previously denied (but subsequently upheld) claims. Based upon the order in which the instant proceedings were filed, the Court finds it appropriate to vacate the master arbitration award that is the subject of the first proceeding. It follows that the corresponding NF arbitration award for the first three neuro-stim treatments must be confirmed, irrespective of whether Respondent was permitted to raise the defense of policy exhaustion for the first time before the master arbitrator.

In addressing the second proceeding herein (Index No. 500722/2022), the Court is guided by the master arbitration procedures set forth in 11 NYCRR 65-4.10. Section 65-4.10(c), entitled "Scope of Master Arbitration Review," which outlines the proper parameters under which a master arbitrator may review the findings of a no-fault arbitrator. One of those parameters, set forth in subsection (6) of the section 65-4.10 (c), requires that "the master arbitrator shall only consider

those matters which were the subject of the arbitration below or which were included in the arbitration award appealed from."

Here, the Court finds that the master arbitrator erred in considering Respondent's defense of policy exhaustion in both proceedings for want of authority to consider matters proffered for the first time on appeal (*see Matter of Allstate Ins. Co. v Espinal*, 205 AD2d 531 [2d Dept 1994]; *Matter of Country Wide Ins. Co. v Brownsville Chiropractic PC*, 2021 NY Slip Op 32296[U] [Sup Ct, NY County 2021]). Furthermore, the Respondent's defense of policy exhaustion – consisting of a payout ledger that was not authenticated by a person with knowledge from Respondent [5] – should not have been accepted by the master arbitrator, and cannot be accepted by this Court as proof that the payments listed therein had been made (*see* CPLR 4518 [a]; *Speirs v Not Fade Away Tie Dye Co., Inc.*, 236 AD2d 531, 532 [2d Dept 1997]; *JPC Med., P.C. v State Farm Mut. Auto. Ins. Co.*, 75 Misc 3d 136[A][App. Term 2d, 11th and 13th Jud Dists. 2022]; *Charles Deng Acupuncture, P.C. v 21st Century Ins. Co.*, 61 Misc 3d 154[A][App. Term 2d, 11th and 13th Jud Dists 2018]).

Accordingly, the master arbitration award in the second proceeding herein which is under index No. 500715/22 is vacated, and the corresponding NF arbitration award is confirmed in its entirety.

The Court finds that the parties' remaining contentions are either academic or without merit.

Accordingly, it is hereby

ORDERED and ADJUDGED, that in both matters, the master arbitration awards are vacated and upon vacatur, the underlying no-fault arbitration awards are confined, and it is further

[5] *See* Payout ledger as attached to Respondent's letter memoranda to the Master Arbitrator (filed under Exhibit D as part of documents e-filed under NYSCEF Dox No. 6 in each proceeding).

ORDERED and ADJUDGED, that the Petitioner's requests for attorneys fees, in both petitions, are granted pursuant to 11 NYCRR 65-4.10(j)(4), without Respondent's opposition, and it is further

ORDERED, that Petitioner shall serve a copy of this decision and judgment in both proceedings with notice of entry upon Respondent's counsel within ten (10) days of such entry.

This constitutes the decision and judgment of the Court in each proceeding.

HON. INGRID JOSEPH J. S. C.

Hon. Ingrid Joseph
Supreme Court Justice