

American Tr. Ins. Co. v A to Z Med. Care PC

2023 NY Slip Op 30674(U)

March 3, 2023

Supreme Court, New York County

Docket Number: Index No. 650023/2023

Judge: Shahabuddeen Abid Ally

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(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. SHAHABUDDEN ABID ALLY PART 16TR

Justice

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AMERICAN TRANSIT INSURANCE COMPANY,

Petitioner,

- v -

A TO Z MEDICAL CARE PC a/a/o INTAZ POKHAN,

Respondent.

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INDEX NO. 650023/2023

MOTION DATE 01/03/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 24, 25, 28, 29, 30 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Petitioner moves pursuant to CPLR § 7511, Insurance Law § 5106(c), 11 NYCRR §§ 65-4.10(h)(1)(i) and (h)(2) for an order vacating the arbitration awards issued in the matter of AAA Case No. 17-20-1176-0713. Respondent opposes and cross-moves for an order confirming the awards along with reasonable attorneys’ fees pursuant to 11 NYCRR § 65-4.10(j)(4). Upon the above cited papers, the Court’s decision is as follows:

Background

Respondent’s assignor Intaz Pokhan was involved in a motor vehicle accident on July 3, 2017. During the period from August 21, 2017 to September 11, 2018, Pokhan sought medical treatment, including physical therapy services, for injuries allegedly sustained in the accident. Respondent ultimately sent a total of twenty-six claims to petitioner, seeking a total of \$5,688.07 for unpaid physical therapy services provided to the assignor. After making several verification requests, petitioner denied some claims based on the assignor’s failure to appear for an

Independent Medical Examination (“IME”) and denied the remainder for failure to comply with the verification requests. Respondent sought arbitration.

On August 11, 2022, a hearing was held before an arbitrator. After the hearing, the arbitrator found in favor of respondent with respect to twelve of the bills on the grounds that petitioner failed to reimburse or deny the claims within thirty days of receipt of the requested verification as required, resulting in an award of \$4,274.07 with interest at 2 percent per month from January 3, 2018, attorneys’ fees in accordance with 11 NYCRR § 65-4.6(d), and (petitioner’s ex A, NYSCEF document no. 3). The rest of the claims were dismissed (*id.*).

Thereafter, petitioner sought review from a master arbitrator. On October 18, 2022, the award was affirmed in its entirety by the master arbitrator (petitioner’s ex B, NYSCEF document no. 4). Petitioner subsequently commenced the instant application.

Discussion

“It is well settled that a court may vacate an arbitration award only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator’s power” (*Matter of Falzone [New York Cent Mut Fire Ins Co]*, 15 NY3d 530, 534 [2010]). Such enumerated limitations are set forth in CPLR § 7511, which provides that an arbitration award may be vacated upon a finding that the rights of a party were prejudiced by (1) corruption, fraud, or misconduct in procuring the award; (2) the partiality of an arbitrator; (3) the arbitrator having exceeded their power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or (4) failure to follow the procedures set forth in Article 75 of the CPLR (CPLR § 7511[b][1][i]-[iv]). A party seeking to vacate an arbitration award bears a heavy burden, as “[a]n arbitration award must be upheld when the arbitrator ‘offer[s] even a barely colorable justification for the outcome reached’” (*Wien &*

Malkin, LLP v Helmsley-Spear Inc, 6 NY3d 471, 479 [2006][citing *Matter of Andros Compania Maritima, S.A. [Marc Rich & Co, A.G.]*, 579 F2d 691, 704 [2d Cir 1978]].

Petitioner contends that the arbitration decision was arbitrary and capricious, irrational, and without a plausible basis. Specifically, petitioner argues that it rightfully denied the subject claims retroactively based on the assignor's failure to appear for a duly noticed IME and that the arbitrator's determination was therefore incorrect as a matter of law. In opposition, respondent argues that petitioner fails to establish any of the grounds for vacatur articulated in CPRL § 7511 and therefore there is no basis to disturb the arbitrator's decision.

On review of the documents presented, the Court finds that the arbitrator conducted a detailed review of the evidence and issued an award that contained more than a "colorable justification" for the outcome (*Wien & Malkin, LLP v Helmsley-Spear Inc*, 6 NY3d 471, 479 [2006][citing *Matter of Andros Compania Maritima, S.A. [Marc Rich & Co, A.G.]*, 579 F2d 691, 704 [2d Cir 1978])). The arbitrator clearly set forth the evidence presented to her and upon which her legal analysis was based, including the defects in petitioner's documents relating to the October 26, 2017 bill and the evidence supporting her finding relating to services rendered between August 12, 2017 and October 26, 2017.

The Court further finds that the master arbitrator applied the appropriate standard and affirmed the award accordingly. As the Court's review is limited to that assessment, the Court is without authority to substitute its own weighing of evidence or make legal conclusions based thereon. Petitioner's application to vacate the award must be denied.

Further, where an application to vacate or modify an arbitration award is denied, CPLR § 7511(e) mandates that the reviewing court confirm the award (*Blumenkopf v Proskauer Rose LLP*, 95 AD3d 647, 648 [1st Dept 2012]). The award is therefore confirmed.

Attorney's Fees

Respondent requests attorney fees pursuant to 11 NYCRR 65-4.10(j)(4), which provides that “[t]he attorney’s fee for services rendered . . . in a court appeal from a master arbitration award and any further appeals, shall be fixed by the court adjudicating the matter.” A “court appeal” encompasses a proceeding, such as the instant one, taken pursuant to CPLR article 75 (*Matter of Country-Wide Ins Co v TC Acupuncture P.C.*, 179 AD3d 414 [1st Dept 2020]). As respondent has not supplied documentation or requested a specific amount in fees, the Court will conduct a fee hearing to determine the appropriate award. Accordingly, it is hereby:

ORDERED and **ADJUDGED**, that the application to vacate the arbitration award is denied and the petition dismissed; and it is further


ORDERED and **ADJUDGED**, that the award is confirmed; and it is further

ORDERED, that respondent A to Z Medical Care PC shall have judgment in the amount of \$4,274.07 plus attorneys’ fees and costs as directed by the arbitration award; and it is further

ORDERED, that respondent is awarded reasonable attorneys’ fees pursuant to 11 NYCRR § 65-4.10(j)(4), and the parties directed to appear for a hearing to determine the amount of such fees on April 18, 2023 at 11:00 AM via Microsoft Teams, with link to be provided by the Court.

This constitutes the decision and order of the Court.

3/3/2023
DATE


SHAHABUDEEN ABID ALLY, A.J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER REFERENCE

INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT