

**State Farm Mut. Auto. Ins. Co. v Selective Ins. Co. of
Am.**

2023 NY Slip Op 30696(U)

March 7, 2023

Supreme Court, New York County

Docket Number: Index No. 654402/2022

Judge: Lori S. Sattler

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. LORI S. SATTLER PART 02TR

Justice

-----X

STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY

Petitioner,

- v -

SELECTIVE INSURANCE COMPANY OF AMERICA,

Respondent.

-----X

INDEX NO. 654402/2022

MOTION DATE 12/16/2022

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

In this Article 75 proceeding, State Farm Mutual Automobile Insurance Company (“Petitioner”) petitions to vacate an Amended Arbitration Decision dated August 23, 2022 (“Amended Decision”). Respondent Selective Insurance Company of America (“Respondent”), cross-petitions for an Order confirming the Amended Arbitration Decision and directing that judgment be entered in its favor.

This action stems from an automobile accident. Respondent issued a workers compensation policy of insurance to American Glass Company of Albany (“American Glass”). Non-party George Ellis (“Ellis”) was an employee of American Glass and was a driver in one of the vehicles involved in the accident. Petitioner issued a policy to non-party Scott Camarra (“Camarra”). On November 24, 2004, Camarra hit the American Glass vehicle driven by Ellis causing him to sustain “extensive cervical injuries” (NYSCEF Doc. 1). Thereafter, Respondent, as the workers compensation carrier, was required to pay Ellis for his lost wages and medical expenses in connection with the accident. On March 31, 2008, an arbitration decision

determined that Camarra was 100% responsible for causing the accident and awarded Respondent \$14,614.43 in damages against State Farm (NYSCEF Doc. 14). On January 2, 2009, the New York Workers Compensation Board directed Respondent to pay Ellis's workers compensation benefits in connection to the accident (NYSCEF Doc. 17).

Respondent contends that it recovered approximately \$50,000 in damages representing the no-fault benefits that it had paid out to Ellis or on his behalf and that it then filed several arbitration proceedings to recover payments made above the \$50,000 no-fault limit (NYSCEF Doc. 14 at par. 14-15). An arbitration was conducted by arbitrator Jack Pierson on August 22, 2022 (NYSCEF Doc. 3). In that decision, the arbitrator found: "As established via the decisions provided the prior arbitration(s) decision is res judicata and binding to the liability of this occurrence, such that the State Farm insured is solely negligent for this occurrence due to the improper lane usage" (*id.*). Under "Explanation of Decision," Petitioner points to the language "the IME provided by State Farm is compelling to question the casual [sic] relationship of the current damages sought . . . with consideration of the WC board decision in 2008 which acknowledges that there are other occurrences of causation" (*id.*). The decision goes on to find that \$19,840 in damages was proven and apportions 100 percent of the liability to State Farm. Notably, despite what appears to be favorable language to Petitioner in the explanation decision, the arbitrator denies their affirmative defenses. In his ruling, despite apportioning the full damages to Petitioner, he states that the final award is \$0.

The following day, an amended decision was rendered which stated "***AMENDED DECISION***Correcting award***" (NYSCEF Doc. 4). Although the decision rearranged certain sections, its substance remained identical other than to award \$19,840 to Respondent, payable by Petitioner. Petitioner contends that the amended decision was the product of an ex

parte communication, and that the decision should be vacated as it does not set forth a basis for the change in award. Respondent states that it complied with the arbitration company's rules and made a post decision inquiry to it of the "very apparent clerical/scrivener's error made by the arbitrator."

The Court has consistently recognized the long public policy favoring arbitration (*Smith Barney v Sacharow*, 91 NY2d 39, 49 [1997]). "CPLR article 75 codifies a limited role for the judiciary in arbitration. In that regard, an application to vacate an arbitration award may be granted in narrow circumstances, including where 'an arbitrator . . . exceeded his [or her] power'" (*American International Specialty Lines. Ins. Co. v Allied Capital Corp*, 35 NY3d 64, 70 [2020]).

The Court finds no basis to vacate the Amended Decision as it cannot be found that the arbitrator has exceeded his power. After a careful review of the initial decision and the amended decision, there can be no other finding than that the initial decision did contain an error. The initial decision determined that there was to be an award and that 100 percent of it was attributable to Petitioner. Thus, the finding that \$0 was owed was clearly an error. In that the Court finds no basis to disturb the Arbitrator's Amended Decision, the petition is denied and the cross-petition is granted. Accordingly, it is hereby,

ADJUDGED that the petition is denied and the cross-petition is granted; and it is

ADJUDGED that the award rendered in favor of Respondent and against Petitioner is confirmed; and it is further

ADJUDGED that Respondent Selective Insurance Company of America, does recover from Petitioner State Farm Mutual Automobile Insurance Company, the amount of \$ 19,840, plus interest at the rate of 9% per annum from the date of August 23, 2022, as computed by the

Clerk in the amount of \$_____, together with costs and disbursements in the amount of \$_____ as taxed by the Clerk, for the total amount of \$_____, and that the petitioner have execution therefor.

3/7/2023
DATE


LORI S. SATTLER, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE