

**Matter of American Tr. Ins. Co. v
State Farm Gen. Ins. Co.**

2023 NY Slip Op 31054(U)

March 31, 2023

Supreme Court, New York County

Docket Number: Index No. 654374/2022

Judge: John J. Kelley

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

PRESENT: HON. JOHN J. KELLEY **PART** **56M**

Justice

-----X

In the Matter of

AMERICAN TRANSIT INSURANCE COMPANY,

Petitioner,

- v -

STATE FARM GENERAL INSURANCE COMPANY,

Respondent.

-----X

INDEX NO. 654374/2022

MOTION DATE 01/11/2023

MOTION SEQ. NO. 001

**DECISION, ORDER, AND
JUDGMENT**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14

were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

American Transit Insurance Company (ATIC) petitions pursuant to CPLR 7510 to confirm two arbitration awards, each dated November 17, 2021, made by an arbitrator acting under the auspices of Arbitration Forums, Inc. (AFI), and pursuant to CPLR 7514 to direct the entry of judgment thereon. The respondent, State Farm General Insurance Company (State Farm) opposes the petition. The petition is granted to the extent that the award issued under AFI Docket No. 1068-10635-21-00 is confirmed, and ATIC may enter judgment against State Farm in the principal sum of \$13,139.92, plus statutory interest from November 17, 2021. The petition is otherwise denied. The court expresses no opinion as to which party bears the loss in connection with the \$13,139.92 check that had been mailed by State Farm to ATIC, in satisfaction of one of the awards, that was allegedly stolen, endorsed by a stranger to the arbitration, and cashed by that person.

ATIC is the insurer of a motor vehicle owned by Roberto Castro. State Farm is the insurer of a motor vehicle owned by Shelby Juarez. On March 1, 2018, the operator of Castro's

vehicle was traveling on Northern Boulevard in Queens, when it was struck from the rear by a vehicle that fled the scene. The operator of, or a passenger in, the Castro vehicle recorded the license plate number of Juarez's vehicle. Both Yasmeen Eason and Michele Estella, who were in the Castro vehicle, made claim upon ATIC, as Castro's insurer, for first-party (no-fault) benefits pursuant to Insurance Law § 5103, and ATIC paid claims totaling \$13,139.92 on Eason's behalf and \$2,086.22 on Estella's behalf.

Inasmuch as the vehicle that ATIC had insured was "motor vehicle used principally for the transportation of persons or property for hire" (Insurance Law § 5105[a]), ATIC was entitled to seek a personal injury protection (PIP) "loss transfer" from State Farm to reimburse it for the benefits it had paid out to Eason and Estella. To obtain this loss transfer, ATIC was required to establish that the operator of the vehicle insured by State Farm was at fault in the happening of the accident. Because Insurance Law § 5105(b) provides that, where an insurer seeks to recover first-party benefits/PIP loss transfer from the "insurer of any other covered person" on the ground that the other covered person was at fault in the happening of the accident, "[t]he sole remedy . . . shall be the submission of the controversy to mandatory arbitration pursuant to procedures promulgated or approved by the superintendent" of the New York State Department of Financial Services. Pursuant to those regulations, AFI has been designated as the exclusive forum for resolution of no-fault related arbitration matters (see 11 NYCRR 65.10). ATIC thus demanded inter-insurer arbitration with State Farm before AFI.

At the arbitration hearing, Juarez contended that her vehicle was not involved in the loss, asserting that, to the contrary, the vehicle had been in storage for five months, including the date of loss in question. In two arbitration awards, each dated November 17, 2021, an arbitrator acting under the auspices of AFI rejected Juarez's testimony, found in favor of ATIC, and concluded that operator of the vehicle owned and insured by State Farm was at fault for the happening of the subject accident. He thus determined that State Farm was obligated to pay ATIC the sums of \$13,139.92 and \$2,086.22, for a total of \$15,226.14.

State Farm has alleged that, prior to the commencement of this proceeding, it tendered two checks to ATIC, one in the face amount of \$13,139.92 that was issued with respect to payments that ATIC made Eason, and the second, in the face of amount \$2,086.22, that was issued with respect to payments that ATIC made to Estella. ATIC commenced this proceeding on November 16, 2022, seeking only confirmation of the awards and the right to enter judgment thereon. State Farm answered the petition, alleging payment as a defense.

There is no dispute that ATIC received the \$2,086.22 check. The parties also agree that ATIC never received the \$13,139.92 check. According to State Farm, the \$13,139.92 check was stolen, likely from the mail, was thereafter endorsed by a person by the name of Travis Villalobas, and cashed by that person, who was not its employee or agent, but instead a complete stranger to the arbitration proceedings. In anticipation of ATIC's reply, State Farm argued that, although the parties both knew that there was a dispute as to the \$13,139.92 check, ATIC did not raise it in its petition, and that it would be improper to raise newly alleged theories of recovery for the first time in reply. As expected, ATIC addressed the stolen check for the first time in its reply papers.

Pursuant to CPLR 7510, the court "shall confirm an [arbitration] award upon application of a party made within one year after its delivery to him [or her] unless the award is vacated or modified upon a ground specified in section 7511." The grounds specified in CPLR 7511 are exclusive (see *Bernstein Family Ltd. Partnership v Sovereign Partners, L.P.*, 66 AD3d 201 [1st Dept 2009]) and it is a "well-established rule that an arbitrator's rulings, unlike a trial court's, are largely unreviewable" (*Matter of Falzone v New York Cent. Mut. Fire Ins. Co.*, 15 NY3d 530, 534 [2013]). The instant proceeding to confirm the arbitration award was timely commenced on November 16, 2022 (see CPLR 304[a]). ATIC contends that the awards were proper in all respects and that no grounds exist for modification or vacatur. Inasmuch as ATIC conceded that it received the \$2,086.22 check, State Farm established that the proceeding is barred, in part, to the extent that ATIC seeks to confirm that arbitration award and enter judgment for that

amount (see *U.S. Bank N.A. v Zaccagnino*, _____ AD3d _____, 2023 NY App Div LEXIS 1192 [2d Dept, Mar. 8, 2023] [affirming dismissal based on defendant's establishment of affirmative defense of payment]; *Leishman v Schulman*, 190 AD3d 460, 460 [1st Dept 2021] [defendant established proof of payment of obligation to plaintiff]).

With respect to the \$13,139.92 award, however, there is no basis upon which to deny the petition to confirm the arbitration award in ATIC's favor, that was rendered in connection with Eason's injuries, or to preclude the entry of judgment thereon.

Although the petition itself did not raise the issue of a stolen check, State Farm raised the issue of payment as an affirmative defense, but conceded that the check had been stolen and forged by a person unrelated to any party. Thus, the only questions before this court are whether ATIC established its entitlement to confirm that award and enter judgment thereon, or whether State Farm established, as a matter of law, its affirmative defense of payment.

Crucially, neither party briefed the issue of which of them bears the loss of the forgery, or what steps each needed to take to avoid being held responsible for the loss (see generally *Guardian Life Ins. Co. of Am. v Chemical Bank*, 94 NY2d 418, 422 [2000]; *Putnam Rolling Ladder Co. v Manufacturers Hanover Trust Co.*, 74 NY2d 340, 343 [1989]). In any event, the court notes that "[the] equitable maxim that where one of two innocent persons must suffer by reason of the fraud of a third person, the party whose act, omission, or negligence enabled the third person to consummate the fraud should bear the loss, is a fundamental theory upon which the Uniform Commercial Code rests" (*Fireman's Fund Ins. Co. v Bank of New York*, 146 AD2d 95, 98 [1st Dept 1989], quoting *Brownlow v Aman*, 740 F2d 1476, 1489 [10th Cir 1984]). In light of this rule, State Farm did not establish, as a matter of law, its affirmative defense of payment with respect to the \$13,139.92 check, and, in any event, it cannot do so in the context of a CPLR article 75 proceeding, which is summary in nature (see *159 MP Corp. v Redbridge Bedford, LLC*, 33 NY3d 353, 365 [2019]; *Matter of Aish Hatorah N.Y. Inc. v Fetman*, 45 Misc 3d 1203[A], 2014 NY Slip Op 51430[U], *14, 2014 NY Misc LEXIS 4227, *33-34 [Sup Ct, Kings

County, Sep. 29, 2014]). Rather, that issue may only be addressed in the context of a plenary action to vacate or enforce the judgment. Hence, the judgment to be entered upon the arbitration award here shall be without prejudice to the proper commencement of a plenary action by State Farm to vacate the judgment on the ground that it did not bear the loss of the forgery, or of a plenary action by ATIC to enforce the judgment on the ground that it did not bear the loss of the forgery, either of which may involve a factual issue as to the nature of State Farm's check processing, handling, and mailing procedures.

The judgment must also bear interest from November 17, 2021, the date of the arbitration award (see CPLR 5002; *Board of Educ. of Cent. School Dist. No. 1 of Towns of Niagara, Wheatfield, Lewiston & Cambria v Niagara-Wheatfield Teachers Assn.*, 46 NY2d 553, 558 [1979]; *Dermigny v Harper*, 127 AD3d 685, 686 [2d Dept 2015]; *Matter of Levin & Glasser, P.C. v Kenmore Prop., LLC*, 70 AD3d 443, 446 [1st Dept 2010]; *Matter of Gruberg v Cortell Group, Inc.*, 143 AD2d 39, 39 [1st Dept 1988]).

Accordingly, it is

ADJUDGED that the petition is granted to the extent that the arbitration award made by Arbitration Forums, Inc., in the matter entitled *American Transit Ins. Co. v State Farm Gen. Ins. Co.*, Arbitration Forums, Inc., Docket Number I068-10635-21-00, dated November 17, 2021, be, and hereby is, confirmed, and the petition is otherwise denied and the proceeding is otherwise dismissed; and it is further,

ORDERED that the Clerk of the court shall enter a money judgment in favor of American Transit Insurance Company and against State Farm General Insurance Company in the principal sum of \$13,139.92, with statutory interest at 9% per annum from November 17, 2021.

This constitutes the Decision, Order, and Judgment of the court.

3/31/2023
DATE


JOHN J. KELLEY, J.S.C.

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