

American Tr. Ins. Co. v Sunnyside Chemists, Inc.

2023 NY Slip Op 31365(U)

April 25, 2023

Supreme Court, Kings County

Docket Number: Index No. 536964/2022

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 25th day of April 2023

HONORABLE FRANCOIS A. RIVERA

-----X
AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- against -

SUNNYSIDE CHEMISTS, INC., A/A/O ALICIA RIVERA

Defendants.

-----X

DECISION & ORDER

Index No.: 536964/2022

Oral argument: 4/6/2023

Cal. No.: 10, Ms. No.: 1

By notice of petition and petition filed on December 20, 2022, under motion sequence number one, Petitioner American Transit Insurance Company (hereinafter ATIC) seeks an order and judgment pursuant to CPLR 7511, Insurance Law 5016(c), 11 NYCRR 65-4.10(h)(1)(i) and 11 NYCRR 65-4.10(h)(2) vacating a no-fault insurance master arbitration award of Richard B. Ancowitz, dated October 17, 2022, which affirmed the arbitration award of Mona Bargnesi, dated July 28, 2022, granting respondent Sunny Chemists Inc.'s (hereinafter the Applicant) claim for no-fault insurance compensation in the amount of \$3,209.61 for prescription medications provided to its assignor Alicia Rivera (hereinafter the Assignor).

NYSCEF documents numbered one through and including twelve were considered in determining the instant petition. The Applicant has neither appeared nor submitted opposition to this petition.

BACKGROUND

The petition arises out of a motor vehicle collision which occurred on January 6, 2020. The Assignor was an unrestrained passenger who allegedly injured her neck and back. The issue before the arbitrator was whether the Applicant was entitled to reimbursement for prescription medications dispensed on August 10, 2020, and November 19, 2020, to the Assignor. ATIC denied reimbursement based on a peer review by Peter Chiu, MD, dated January 8, 2021, as well as the Applicant 's failure to submit its bill within 45 days of the date of service. Mona Bargnesi found that the Applicant had submitted proof of mailing, in the form of a U.S. Postal Service log dated September 4, 2020, reflecting that the disputed bill was duly and timely mailed. Bargnesi further found that ATIC had not provided any evidence that the bill was not received.

Mona Bargnesi also found that Dr. Chiu's peer review was insufficient to show that Lidocaine, the prescription medication provided to the assignor, was not medically necessary. Bargnesi found that the peer review did not address assignor's specific condition or explain that Assignor's condition was simply a sprain or strain. The peer review was not factually supported and was therefore conclusory. The Applicant was therefore entitled to full reimbursement. Master Arbitrator Richard B. Ancowitz (hereinafter Ancowitz) reviewed the award by Mona Bargnesi and found no reason to disturb the award. Ancowitz included the arbitrator's determination that respondent's peer review report was insufficient to support their lack of medical necessity defense. Ancowitz found that the award was not irrational or otherwise infirm.

LAW AND APPLICATION

A court reviewing the award of a master arbitrator is limited to the grounds set forth in CPLR Article 75, which include, in this compulsory arbitration, the question of whether the determination had evidentiary support, was rational, or had a plausible basis (*see Matter of Petrofsky [Allstate Ins. Co.]*, 54 NY2d 207, 212 [1981]). Notably, the master arbitrator's review power is broader than that of the courts' because it includes the power to review for errors of law (*see id.* at 211-212; 11 NYCRR 65-4.10[a][4]). In contrast, the courts generally will not vacate an arbitrator's award where the error claimed is the incorrect application of a rule of substantive law, unless it is so irrational as to require vacatur (*Matter of Smith [Firemen's Ins. Co.]*, 55 NY2d 224, 232 [1982]; *see also Matter of Liberty Mut. Ins. Co. v Spine Americare Med.*, 294 AD2d 574, 576 [2nd Dept 2002]).

The master arbitrator reviewed the record and award of the no-fault arbitrator and stated the following findings. It was within the province of the no-fault arbitrator to determine what evidence to accept or reject and what inferences should be drawn based on the evidence. Upon reviewing the record and evidence submitted, the master arbitrator did not find the no-fault arbitrator's interpretation of the evidence and applicable law pertaining to this dispute to be arbitrary, capricious, or contrary to law. Consequently, the master arbitrator upheld the award to the respondent in the amount of \$3,209.61.

The instant petition is a special proceeding. The procedure for special proceedings contemplates that the petition will be accompanied by affidavits demonstrating the evidentiary grounds for the relief requested (*see CPLR 403[a]*). It is settled that a special proceeding is subject to the same standards and rules of decision as apply on a motion for summary judgment, requiring the court to decide the matter upon the pleadings, papers, and admissions to the extent

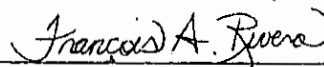
that no triable issues of fact are raised (CPLR 409 [b]; *Saadia Safdi Realty, LLC v Melvin Press*, 207 AD3d 633, 635 [2d Dept 2022], citing *Matter of Arben Corp. v Durastone, LLC*, 186 AD3d 599, 600 [2d Dept 2020]).

The evidentiary submissions and legal reasoning proffered by the petitioner do not make a prima facie showing that the no-fault arbitrator's award or the master arbitrator's award was either arbitrary or capricious. To the contrary, the petitioner's evidentiary submissions established that the no-fault arbitrator's award and the master arbitrator's affirmance of the award was based on sound and well-reasoned analysis of the evidence submitted and upon the proper application of the pertinent laws and regulations.

CONCLUSION

The Petition by American Transit Insurance Company for an order and judgment pursuant to CPLR 7511, Insurance Law 5016(c), 11 NYCRR 65-4.10(h)(1)(i) and 11 NYCRR 65-4.10(h)(2) vacating a no-fault insurance master arbitration award of Richard B. Ancowitz which affirmed the arbitration award of Mona Bargnesi granting respondent Sunny Chemists Inc.'s claim for no-fault insurance compensation is denied and the petition is dismissed. The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

HON. FRANCOIS A. RIVERA
J.S.C.