

**New Millenium Pain & Spine Med. PC v Geico Cas.
Co.**

2023 NY Slip Op 31418(U)

April 28, 2023

Supreme Court, New York County

Docket Number: Index No. 650919/2023

Judge: Sabrina Kraus

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. SABRINA KRAUS

PART

57TR

Justice

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INDEX NO. 650919/2023NEW MILLENIUM PAIN & SPINE MEDICINE PC A/A/O
TRACEY SIMPSONMOTION DATE 06/25/2023

Plaintiff,

MOTION SEQ. NO. 001

- v -

GEICO CASUALTY COMPANY,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 13, 14, 15, 16, 17, 18, 19, 20

were read on this motion to/for

VACATE - DECISION/ORDER/JUDGMENT/AWARD.

BACKGROUND

Tracey Simpson (Assignor) a 58-year-old female, was injured in a motor vehicle accident on April 26, 2020. As a result, Assignor suffered injuries, which required healthcare services. New Millenium Pain & Spine Medicine (NMP) provided Assignor with upper and lower extremity EMG/NCV testing on June 25, 2020. Geico Casualty Company (Geico) denied the claim submitted by NMP based upon lack of medical necessity.

The amount in dispute was \$ 3109.07.

The parties submitted to arbitration to resolve the underlying dispute regarding no fault benefits. Respondents raised policy exhaustion as a defense for the first time at arbitration.

Nicole Simmons (NS) the Arbitrator, held a hearing on November 3, 2022, and issued a decision on the same day. The decision found in favor of Respondent. Specifically, NS found,

In the instant case, Respondent maintains that the applicable Personal Injury Protection (PIP) benefits under the policy have been exhausted. In support of this contention Respondent submitted payment log/ PIP ledger and documentation confirming insurance policy information and terms of the underlying insurance

policy. The policy exhaustion precludes the Applicant from collecting on this claim. Coverage does not exist beyond the policy limits. Once the limits are exhausted, it is as if no policy was ever in effect. The insured, or the insured's assignees, have received the full benefit of the policy. Respondent has demonstrated that the applicable policy has been exhausted in the instant matter and the denial is sustained.

NMP pursued Master Arbitration on the grounds that the award by the Arbitrator was not rationally based upon the evidence presented and was arbitrary and capricious. On February 1, 2023, Alana Barran (AB), the Master Arbitrator found:

I have carefully reviewed the briefs, the record on appeal and the pertinent case law. The NFA's decision clearly opines on the policy exhaustion defense related to this claim. The NFA specifically held that "An insurer is not required to pay a claim where the policy limits have been exhausted; its duties under the insurance contract cease where it has paid the full monetary limits."

Applicant/Appellant does not dispute that the policy was exhausted at the time of the hearing but rather argues that on the date that the claim was received by the Respondent/Appellee, the policy limits had not been exhausted and under priority of payment the claim should have been paid at said time. Applicant/Appellant does not dispute that Respondent/Appellee timely denied the claim at issue on the basis of lack of medical necessity. Applicant/Appellant does not dispute that Respondent/Appellee timely denial of the claim at issue on the basis of lack of medical necessity is proper under the claims process of the No-Fault Regulation.

Here, the Applicant/Appellant does not address the underlying basis for the denial by Respondent/Appellee which would render the date of exhaustion moot as decided by the NFA. Instead, Applicant/Appellant cites to cases where policy exhaustion was not sustained based on an untimely denial or improper application of the claims process or where the verification of the claim was resolved. Here, the Applicant/Appellant fails to demonstrate or support that Respondent/Appellee failed to correctly and properly handle the claims process where it is not disputed that the claim was timely denied on the basis of lack of medical necessity as part of the handling under the claims process. The Applicant/Appellant has not proffered any legal support for the assertion that only the verification process serves as an exception to priority of payment pursuant to Applicant/Appellant's interpretation of the cited caselaw, nor proffered support that there was an error here in processing of this claim.

Most importantly, Applicant/Appellant does not provide a valid reason or support which would warrant disturbance of the NFA's finding that "In the instant case, Respondent maintains that the applicable Personal Injury Protection (PIP) benefits

under the policy have been exhausted. In support of this contention Respondent submitted payment log/ PIP ledger and documentation confirming insurance policy information and terms of the underlying insurance policy. The policy exhaustion precludes the Applicant from collecting on this claim. Coverage does not exist beyond the policy limits. Once the limits are exhausted, it is as if no policy was ever in effect. The insured, or the insured's assignees, have received the full benefit of the policy. Respondent has demonstrated that the applicable policy has been exhausted in the instant matter and the denial is sustained." The NFA rejects the caselaw relied upon by Applicant/Appellee when citing to the caselaw the NFA finds controlling. Again, the Applicant/Appellee has failed to demonstrate why the NFA's rightful choice of a sound legal basis for her decision is improper...

Here, I find that the NFA, as the trier of facts, properly accepted the evidence offered in support of the Respondent/Appellee's policy exhaustion defense with legal support. The assertion that the disposition below was erroneous as a matter of law, arbitrary or capricious lacks merit. Notably, the NFA's determination is the same position taken by many arbitrators, affirmed by master arbitrators, and which accords with the interpretation of the priority of payment where there was a valid basis for a timely denial within the context of policy exhaustion grounded in caselaw as cited by the NFA.

Upon a reading of the record, I am satisfied that the NFA provided a rational legal basis founded on the evidence presented and sound caselaw. The NFA goes further in presenting her rationale by stating that the "Respondent included policy documentation in the form of the Declarations Page which confirms that the Basic PIP limit was \$50,000.00 and there was no additional PIP or Optional Basic Economic Loss Coverage purchased. Also included is a copy of the Payment Ledger showing that the Respondent paid up to the \$50,000 policy limits. Case law dictates that an insurer is not required to pay a claim where the policy limits have been exhausted." In conclusion, I find the evidence and law relied upon by the NFA were sufficient, and from which the NFA rationally and legally based its denial of the claim founded on exhaustion of the policy limits.

I find that the NFA's determination was not irrational, arbitrary, capricious, or incorrect as a matter of law.

THE PETITION

On February 20, 2023, NMP filed a petition to vacate the lower Arbitrator's Award dated November 3, 2022, and a Master Arbitration award dated February 1, 2023 on the grounds that the lower arbitrator exceeded her authority, or so imperfectly executed it, that a final and definite

award upon the subject matter submitted was not made, and the Master Arbitrator erred in affirming the award.

On April 19, 2023, Respondent filed opposition and on April 24, 2023, Petitioner filed reply. On April 27, 2023, the petition was fully submitted and the court reserved decision.

There is no basis to vacate the underlying award on the merits

As held by the Court of Appeals:

Judicial review of a master arbitrator's award "is restricted, by terms of the statute, to 'grounds for review set forth in article seventy-five' of the CPLR (except in those cases where the award is \$5,000 or more, and the applicant or insurer may seek *de novo* review in the courts)." (*Matter of Bamond v Nationwide Mut. Ins. Co.* 75 AD 2d 812, 813, 427 NYS2d 642, affd. 52 NY2d 957, 437 NYS2d 969, 419 NE 2d 872) CPLR 7511 allows a court to vacate an arbitrator's award and, by judicial construction, a master arbitrator's award on the application of either party if "the court finds that the rights of that party were prejudiced by:***(iii) an arbitrator, or agency or person making the award exceeded his power or ***that a final and definite award upon the subject matter submitted was not made." (CPLR 7511, subd. [b], par. 1, cl. [iii].)

Petrofsky (Allstate Ins. Co.), In re, 54 NY2d 207, 210 (1981).

NS provided a detailed basis for the award that was neither arbitrary nor capricious (*Rose Castle Redevelopment II, LLC v Franklin Realty Corp.* 183 AD3d 230). NS reviewed NMP's evidence and determined it was insufficient to establish a policy exhaustion defense.

There was a "colorable justification" and a "plausible basis" for the award (*Id.*). NS provided a rational basis for rejecting the policy exhaustion defense. It was within NS's discretion to determine which evidence in the record to rely on and give weight to. Neither the Master Arbitrator, nor this court, can weigh the evidence anew (*Matter of Bay Needle Care Acupuncture v Country-Wide Ins. Co.* 176 AD3d 806, 807).

Nor was it in error for the Master Arbitrator to confirm the award. The function of the Master Arbitrator in reviewing the decision below is to confirm that the decision was arrived at

in a rational manner, that the decision was not arbitrary and capricious (11 NYCRR 65.17[a][1]) or incorrect as a matter of law (11 NYCRR 65.17[a][4]). The Master Arbitrator noted that NS considered all evidence and rendered a rational decision based on the record and NS's determination of which evidence was credible. There is no basis to vacate the determination. The initial basis of denying the claim was lack of medical necessity. As pointed out by the Master Arbitrator, Petitioner failed to address this issue entirely.

Wherefore, it is hereby

ORDERED that the petition is denied in its entirety; and it is further

ORDERED that, within 20 days from entry of this order, Petitioner shall serve a copy of this order with notice of entry on Respondent, and on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the court.

4/28/2023

DATE

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

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NON-FINAL DISPOSITION

☐

GRANTED IN PART

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OTHER

APPLICATION:

☐

SETTLE ORDER

☐

SUBMIT ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

SABRINA KRAUS, J.S.C.