

Surgical Specialists of Greater N.Y. v Aetna, Inc.

2023 NY Slip Op 31479(U)

May 2, 2023

Supreme Court, New York County

Docket Number: Index No. 654667/2022

Judge: Barry Ostrager

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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. BARRY R. OSTRAGER PART IAS MOTION 61EFM

Justice

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SURGICAL SPECIALISTS OF GREATER NEW
YORK,

Plaintiff,

- v -

AETNA, INC., AETNA HEALTH, INC., and AETNA
LIFE INSURANCE COMPANY,

Defendants.

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INDEX NO.	654667/2022
MOTION DATE	
MOTION SEQ. NO.	001

DECISION + ORDER ON MOTION

HON. BARRY R. OSTRAGER

Plaintiff Surgical Specialists of Greater New York (“SSGNY”) commenced this action against defendants Aetna, Inc., Aetna Health, Inc. and Aetna Life Insurance Company (together, “Aetna”) seeking a declaratory judgment that SSGNY and its employees, members and physicians are not bound by the Provider Agreement; (ii) an order estopping Aetna from remitting payment for out-of-network medical services provided by physicians and employees of Plaintiff at Aetna’s in-network benefit rates; and (iii) an order that Defendants shall re-process any previously submitted claims by SSGNY for out-of-network medical services performed by SSGNY’s employees, members and physicians, that were improperly processed using Aetna’s in-network benefit rates (Complaint, NYSCEF Doc. No. 1). In response, Aetna made this motion seeking an Order, pursuant to CPLR 7503(a), compelling arbitration of the parties’ dispute.

Aetna’s motion to compel arbitration is granted. Dr. Rajinder Malhotra, a doctor associated with plaintiff SSGNY, signed a “Provider Agreement” with Aetna effective as of December 16, 2016 (NYSCEF Doc. No. 2). Dr. Malhotra signed the Provider Agreement “on behalf of [him]self and any and all Group Providers”, which Aetna defines to include the doctors

using SSGNY's Federal Tax I.D. Number when submitting claims to Aetna. The Tax I.D. Number is specified in the Participation Agreement immediately following the signature of Dr. Malhotra, along with the address of SSGNY's principal office in Astoria, NY, which is listed as the "Provider contract notice address".

Significantly, Section 8.0 of the Provider Agreement, entitled "Dispute Resolution", contains a broad Arbitration Clause at Section 8.3, applicable in the event the parties are unable to resolve their disputes through an internal mechanism provided by Aetna or through mediation. The Arbitration Clause states in relevant part (with emphasis in the original) that:

Any controversy or claim arising out of or relating to this Agreement including breach, termination, or validity of this Agreement, except for temporary, preliminary, or permanent injunctive relief or any other form of equitable relief, shall be settled by binding arbitration. COMPANY AND PROVIDER UNDERSTAND AND AGREE THAT, BY AGREEING TO THIS ARBITRATION PROVISION, EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN THEIR INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT. The arbitration will be governed by the Commercial Rules of the American Arbitration Association ("AAA Rules"), as modified by these arbitration provisions and conducted by a sole arbitrator with at least 20 years of litigation experience as a practicing lawyer and/or district court judge. The arbitration will be administered by the AAA.

There are conflicting contentions about the manner in which Aetna handled requests for payments from SSGNY doctors seeking reimbursement for in-network and out-of-network services. And there is an extremely live dispute about the extent to which Dr. Malhotra had, or did not have, authority to bind SSGNY to the Provider Agreement, although there is no dispute that claims from at least one other doctor were sometimes processed in accordance with the Provider Agreement. But the sole legal issue for the Court to determine on this motion is whether this Court, or the AAA Arbitrator, must determine the issue of arbitrability, including whether SSGNY is a "non-signatory" not bound by the Provider Agreement.

On this motion, Aetna has established that the Provider Agreement incorporates at Section 8.3 the Commercial Rules of the American Arbitration Association (“AAA”). Rule 7 of the AAA Rules specifically delegates the issue of arbitrability to the Arbitrator, stating in relevant part as follows:

- (a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim, without any need to refer such matters first to a court.
- (b) The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

Case law provides that the incorporation of the AAA Rules into an agreement delegates the issue of arbitrability to the arbitrator. *See Contec Corp. v Remote Solution, Co., Ltd.*, 398 F.3d 205 (2d Cir. 2005) (incorporation of AAA Rules delegated arbitrability issue to arbitrator); *see also, Skyline Steel, LLC v PilePro LLC*, 139 A.D.3d 646 (1st Dep’t 2016) (“both the arbitration clause and the JAMS rule incorporated therein confer on the arbitrators the power to resolve arbitrability”).

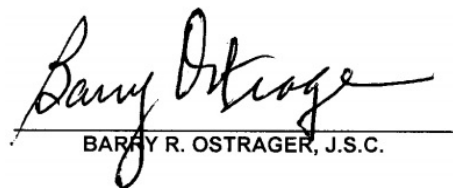
As indicated above, SSGNY vigorously argues that it is a non-signatory to the Provider Agreement and that Dr. Malhotra had no authority to execute the Provider Agreement on behalf of SSGNY. But the Provider Agreement lists SSGNY as the contact person and the billing provider and lists SSGNY’s Tax Identification Number as the Tax Identification Number for billing purposes. As such, the parties have a sufficient relationship to each other and to the rights created under the Provider Agreement to allow the dispute to proceed to arbitration. Indeed, under all these circumstances, the Court is constrained to compel arbitration, and the AAA Arbitrators, not this Court, will decide the issue of arbitrability of this dispute. Aetna has a

textual basis for its argument that this dispute must be arbitrated. If SSGNY prevails on the arbitrability issue, SSGNY can return to Court.

Accordingly, it is hereby

ORDERED that the motion by the Aetna defendants to compel arbitration is granted, and this action is dismissed without prejudice to the determination in the AAA Arbitration.

Dated: May 2, 2023



BARRY R. OSTRAGER, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE