

Lam Quan, MD, PC v Geico Gen. Ins. Co.

2023 NY Slip Op 31503(U)

May 3, 2023

Supreme Court, New York County

Docket Number: Index No. 651286/2023

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH **PART** **14**

Justice

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LAM QUAN, MD, PC A/A/O GINALDI MIRAMBEAUX

Petitioner,

- v -

GEICO GENERAL INSURANCE COMPANY,

Respondent.

-----X

INDEX NO. 651286/2023

MOTION DATE 05/01/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 10, 12, 14, 15, 16, 17

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

The petition to vacate the Master Arbitrator award that affirmed the lower arbitrator’s no-fault award is denied.

Background

This no-fault dispute arises out of an accident involving Mr. Mirambeaux. Petitioner submitted a claim to respondent for \$1,957.59 for treatment it provided to Mr. Mirambeaux and respondent denied this claim based on medical necessity and policy exhaustion. After an initial arbitration, petitioner brought an Article 75 proceeding under Index Number 652832-2022 where it asked the Court for an order that the dispute be sent to a different arbitrator. Respondent did not oppose that petition and so the parties proceeded to another arbitration.

The subsequent lower arbitrator found in favor of respondent (NYSCEF Doc. No. 7). She concluded that the policy was exhausted and so respondent did not have to pay the claim submitted by petitioner. The arbitrator noted that once respondent has paid out the entire amount

of the coverage (\$50,000), the injured person has received the full benefit of the policy. The Master Arbitrator agreed and affirmed the lower arbitrator's decision (NYSCEF Doc. No. 8).

Petitioner claims that when it submitted the bill, there was sufficient coverage and so a policy exhaustion defense was not a rational justification for the denial of its claim. It argues that the lower and master arbitrators exceeded their powers and ignored the order of this Court. Petitioner also makes arguments about respondent's alleged improper application of an offset, although that issue was not raised before the arbitrator.

In opposition,¹ respondent argues that petitioner failed to state a sufficient ground to vacate the awards. It claims it properly submitted evidence to the lower arbitrator to show that the policy was exhausted and the arbitrator agreed. Respondent contends that Court cannot issue awards in excess of an insurance policy's limits. It also argues that the claims about the offset issue are not properly before the Court as they were not raised in the arbitration proceedings below.

In reply, petitioner claims that respondent failed to provide a substantive defense in its answering papers and that there is no dispute that the policy was not exhausted when the bills were submitted. It emphasizes that respondent's position about the offset violates clearly established applicable law. Petitioner maintains that the payments were not made by respondent in accordance with the applicable priority of payment rules.

Discussion

"CPLR 7511 provides just four grounds for vacating an arbitration award, including that the arbitrator exceeded his power (CPLR 7511[b][1][iii]), which "occurs only where the arbitrator's award violates a strong public policy, is irrational or clearly exceeds a specifically

¹ The Court will overlook the fact that responded uploaded its opposition and every exhibit as a single 233-page document, in clear violation of NYSCEF e-filing protocol.

enumerated limitation on the arbitrator's power. Mere errors of fact or law are insufficient to vacate an arbitral award. Courts are obligated to give deference to the decision of the arbitrator, even if the arbitrator misapplied the substantive law in the area of the contract (*NRT New York LLC v Spell*, 166 AD3d 438, 438-39, 88 NYS3d 34 [1st Dept 2018] [internal quotations and citations omitted]).

The Court denies the petition. Petitioner's papers explore the many ways in which it disagrees with the awards issued in respondent's favor, but that is not a basis to vacate the awards. "Petitioner's contention that the hearing officer's decision was based on mistakes of law and a disregard of the evidence is unavailing, since these are not grounds for vacating an arbitration award" (*Adolphe v New York City Bd. of Educ.*, 89 AD3d 532, 533, 932 NYS2d 482 [1st Dept 2011]). Even errors in applying the relevant substantive law are not a basis to grant the petition.

That means that petitioner's claims about the arbitrators' misapplication of substantive law with respect to policy exhaustion are not a sufficient basis to vacate the awards. In other words, the purpose of this petition is to consider whether certain limited grounds to vacate an arbitral award are met. It is not an opportunity to relitigate substantive claims on the merits concerning the parties' disputes. This is not a situation where the award exceeds \$5,000 and the dispute is entitled to *de novo* review (*see* 11 NYCRR 65-4.10[h]).


The Court observes that its previous decision in Index Number 652832/2022, which was issued without any opposition, simply remanded the dispute so that it could be heard by another arbitrator. There were no substantive findings on the merits by this Court about policy exhaustion. Petitioner got another chance to make those arguments and was unsuccessful. The instant petition is not an opportunity to raise issues about the merits again.

The Court also points out that the offset issue was not raised in the arbitration proceedings below and so it cannot be raised in this proceeding for the first time.

Accordingly, it is hereby

ADJUDGED that the petition is denied and, pursuant to CPLR 7511(e), the Court confirms the awards; and it is further

ADJUDGED that the respondent is entitled to a judgment in its favor denying the subject claim by petitioner in its entirety as decided by the subject awards, together with costs and disbursements in the amount of \$ _____ as taxed by the Clerk, for the total amount of \$ _____, and that the respondent has execution therefor.

<u>5/3/2023</u> DATE			 ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED	<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