

Galaxy RX, Inc. v GEICO Gen. Ins. Co.

2023 NY Slip Op 31950(U)

June 8, 2023

Supreme Court, New York County

Docket Number: Index No. 652415/2023

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
COUNTY OF NEW YORK: PART 14

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GALAXY RX, INC. a/a/o RUDY RODRIGUEZ,	INDEX NO.	<u>652415/2023</u>
Petitioner,	MOTION DATE	<u>06/06/2023</u>
- v -	MOTION SEQ. NO.	<u>001</u>
GEICO GENERAL INS. CO.,		
Respondent.		

**DECISION + ORDER ON
MOTION**

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HON. ARLENE P. BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 8, 9, 10, 11 were read on this motion to/for VACATE AWARD.

The petition to vacate two arbitration awards is denied and the petition is dismissed.

Background

This proceeding arises out of a claim for no-fault benefits. Petitioner's assignor, Mr. Rodriguez, was injured in a car accident in 2021. At the time, he was insured by respondent with a policy containing no-fault benefits. Petitioner provided care to Mr. Rodriguez for his injuries and submitted a bill to respondent in the amount of \$1,910. According to petitioner, this bill was sent prior to the exhaustion of the policy's limits. Respondent denied the claim on the ground that there was late proof to support the claim. Petitioner filed a request for arbitration contending that respondent should have paid the bill in the order it was received, while respondent argued the policy was now exhausted (the limit was \$50,000).

On December 28, 2022, the lower arbitrator denied petitioner's claim in its entirety, finding that respondent had demonstrated that the policy was exhausted (NYSCEF Doc. No. 5).

The arbitrator concluded that she "unlike a court, is not authorized to award an amount beyond

the limits of a contract of insurance” (NYSCEF Doc. No. 5 at 3). Petitioner appealed and the master arbitrator affirmed the award (NYSCEF Doc. No. 6).

Petitioner now moves to vacate the master arbitrator’s decision as arbitrary and capricious. Petitioner argues that it submitted its claim for \$1,910 claim prior to the exhaustion of the policy and based on the priority-of-payment regulation (11 NYCRR § 65-3.15), the claim should have been paid. Petitioner asserts that appellate courts have rejected exhaustion of policy limits as a defense to failing to pay a verified claim. Petitioner argues that the arbitrator’s decision is based on a misunderstanding of no-fault law, and the obligation to pay claims in the order of service should not be ignored.

In opposition, respondent argues that at the time of the arbitration, the policy was exhausted and it was under no obligation to reimburse petitioner above the policy limits. According to respondent, any award issued to petitioner would be in excess of the policy limits. Furthermore, respondent maintains that the priority of payment rule as cited by petitioner is irrelevant because of the policy’s exhaustion. Respondent contends that the master arbitrator (and lower arbitrator) rationally relied on caselaw to reach this conclusion.

In reply, petitioner bizarrely argues that it is not asking this Court to award above the policy limits, but is instead asking to vacate the master arbitrator’s award and reinstate the lower arbitrator’s award that granted it \$1,910. Finally, petitioner claims that respondent’s argument regarding priority of payment is circular and courts have routinely addressed how priority of payment regulation applies to a defense of policy exhaustion. Petitioner argues that verified claims must be paid in the order they are received.

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 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 finds that the decision by the arbitrator to deny petitioner’s claim was rational. The arbitrator rationally relied upon *Harmonic Physical Therapy, P.C. v Praetorian Ins. Co.* (47 Misc 3d 137(A), 15 NYS3d 711 [App Term, 1st Dept 2015]), which found that a medical provider “was not precluded by 11 NYCRR 65-3.15 from paying other providers' legitimate claims subsequent to the denial of plaintiff's claims.” The Appellate Term noted that forcing a medical provider “to delay payment on uncontested claims, or, as here, on binding arbitration awards - pending resolution of plaintiff's disputed claim -- runs counter to the no-fault regulatory scheme, which is designed to promote prompt payment of legitimate claims” (*id.*).

That rationale makes sense and petitioner did not cite any binding caselaw or statutes that compels the Court to hold otherwise. Obviously, as the master arbitrator noted, “there has been disagreement among the Courts, individual Arbitrators and Master Arbitrators concerning the policy exhaustion issue” (NYSCEF Doc. No. 6 at 2). But the justification offered by the lower arbitrator (and adopted by the master arbitrator) makes sense. A medical provider need not hold up processing every other payment so that a determination can first be made concerning a

particular payment about which it has an objection. If that were the rule, then every medical provider with claims that an insurance company might promptly pay would have to wait for years until an earlier filed and disputed claim is resolved.

Accordingly, it is hereby

ADJUDGED that the petition is denied and pursuant to CPLR 7511(e) the arbitration awards rendered in favor of respondent and against petitioner (which denied petitioner’s claim in its entirety) is confirmed, and the Clerk is directed to award costs and disbursements in favor of respondent in the amount of \$ _____ as taxed by the Clerk upon presentation of a bill of costs and respondent shall have execution therefor.

6/8/2023
DATE


ARLENE P. BLUTH, 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