

Galaxy RX, Inc. v Geico Ins. Co.

2023 NY Slip Op 31974(U)

June 12, 2023

Supreme Court, New York County

Docket Number: Index No. 651227/2023

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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GALAXY RX, INC.

Petitioner,

- v -

GEICO INS. CO.,

Respondent.

-----X

INDEX NO. 651227/2023

MOTION DATE 05/03/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 12 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

BACKGROUND

Thurman Burke (Assignor), was injured in a motor vehicle accident on March 24, 2021. As a result, Assignor suffered injuries, which required healthcare services. Petitioner, Galaxy RX Inc. provided Assignor with necessary medical goods and/or services May 7, 2021. Respondent Geico Insurance Company denied the claim submitted by Petitioner based upon policy exhaustion.

The amount in dispute was \$ 1986.40.

The parties submitted to arbitration to resolve the underlying dispute regarding no fault benefits. Perry Criscitelli (PC) the Arbitrator, held a hearing on October 24, 2022, and issued a decision on the same day. The decision found in favor of Respondent. Specifically, PC found,

In this case, Respondent has established that the policy limits have been exhausted. Based on the evidence presented, I find in favor of the Respondent. Accordingly, Applicant's claim is denied. This decision is in full disposition of all claims for No-Fault benefits presently before this Arbitrator.

PC relied upon the court's decision in *Harmonic Physical Therapy v. Praetorian Ins. Co.*, 47 Misc. 3d 137(A), 15 N.Y.S.3d 711 (App. Term 2015), which held that a defendant was not

precluded by 11 NYCRR 65-3.15 from paying other providers' legitimate claims subsequent to the denial of plaintiff's claims.

Galaxy 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 December 28, 2022, Robert Trestman (RT), the Master Arbitrator found:

I have carefully reviewed the record on appeal, the parties' briefs and the pertinent case law and regulations. I commend the parties on their informed and persuasive arguments. I acknowledge a lack of consensus both in the case law and the no-fault arbitration forum concerning the policy exhaustion issues raised herein. Within my power of review as a master arbitrator, I find no reversible error in the arbitrator's determination to follow the Court's holding in *Harmonic*, see supra, and its progeny. The arbitrator acknowledged and discussed applicant's arguments advanced herein and noted that the Appellate Division's decision in *Alleviation* did not change his position. I note that the Appellate Division, in *Alleviation*, did not expressly adopt the Appellate Term's reasoning but, instead, affirmed on other grounds. In *Quality Health v. Amica*, 73 Misc. 3d 1231[A] [Civ. Ct. Kings Co. 2021] the court stated: "what the Appellate Division decided in *Alleviation* was that Allstate's motion for summary judgment on policy exhaustion grounds could have been granted but for the fact that it was 'bereft of any specific information regarding the claim' and "there were issues of fact remaining as to when the claim was denied and the basis and efficacy of the denial." I acknowledge that there is room for interpretation of the Appellate Division's decision in *Alleviation* but given that the Appellate Term's decision was affirmed on "other grounds," I cannot find that the arbitrator erred, as a matter of law, in following *Harmonic* and its' progeny. In *Acuhealth Acupuncture v. NYC Transit*, 50 Misc. 3d 1228[A] [Sup. Ct. Kings Co. 2016], the court confirmed a master arbitration award affirming a lower arbitration award wherein the arbitrator denied the claim on policy exhaustion grounds despite the insurer's untimely denials and failure to pay or deny certain of the disputed charges. When an insurer has paid the full policy limits, its duties under the contract of insurance ceases See *Country-Wide v. Sawh*, 272 AD 2d 245 [1st Dept. 2000]. An arbitrator's award directing payment in excess of the policy limits exceeds the arbitrator's power and constitutes grounds for vacatur See *Brijmohan v. State Farm*, 92 NY 2d 821 [1998] and *Allstate v. Branch*, 2022 NY Slip Op. 50277 [U] [App. Term 1st Dept. 2022]. Also see 11 NYCRR 65. 4.10 [a][2]. The foregoing legal analysis is, as stated hereinabove, an unresolved area of the no-fault law yet is set forth to assess the rationality of the lower arbitrator's determination which is the critical key to my power of review. Bearing this in mind, I cannot substitute my judgment in lieu of the lower arbitrator's determination and need only ascertain whether the lower award was irrational, arbitrary and capricious or incorrect as a matter of law. Although another arbitrator might have reached a

different determination herein, I cannot state that the arbitrator herein erred as a matter of law or was so irrational as to warrant vacatur.

THE PETITION

On March 8, 2023, a petition to vacate the Master Arbitration award dated December 28, 2022 on the grounds that it was arbitrary, capricious, irrational, in violation of No Fault law and was so imperfectly executed that a final and definite award upon the subject matter submitted was not made, was filed

On April 26, 2023, Respondent filed opposition and on May 1, 2023, Petitioner filed reply. On May 3, 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).

The lower arbitrator 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). The lower arbitrator reviewed Respondent's evidence and determined it was sufficient to establish a policy exhaustion defense.

There was a “colorable justification” and a “plausible basis” for the award (*Id.*). He provided a rational basis for accepting the policy exhaustion defense. It was within the lower arbitrator’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 the lower arbitrator considered all evidence and rendered a rational decision based on the record and the lower arbitrator’s determination of which evidence was credible. There is no basis to vacate the determination.

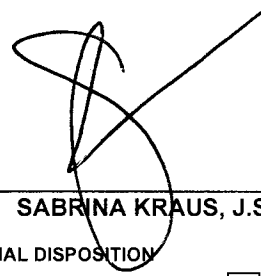
Wherefore, it is hereby

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.



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| <u>6/12/2023</u> DATE | | | | | <u>SABRINA KRAUS, J.S.C.</u> |
| CHECK ONE: | <input checked="" type="checkbox"/> | CASE DISPOSED | | <input type="checkbox"/> | NON-FINAL DISPOSITION |
| | <input type="checkbox"/> | GRANTED | <input checked="" type="checkbox"/> | <input type="checkbox"/> | GRANTED IN PART |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | | <input type="checkbox"/> | OTHER |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | | <input type="checkbox"/> | FIDUCIARY APPOINTMENT |
| | | | | <input type="checkbox"/> | REFERENCE |