

**Matter of New York Black Car Operators' Injury
Compensation Fund Inc. v Hertz Vehs., LLC**

2023 NY Slip Op 32015(U)

June 16, 2023

Supreme Court, New York County

Docket Number: Index No. 450039/2023

Judge: John J. Kelley

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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. JOHN J. KELLEY PART 56M

Justice

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In the Matter of

NEW YORK BLACK CAR OPERATORS' INJURY
COMPENSATION FUND INC., also known as NEW YORK
BLACK CAR FUND, as subrogee of AYRON CARMONA,

Petitioner,

- v -

HERTZ VEHICLES, LLC,

Respondent.

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INDEX NO. 450039/2023
MOTION DATE 03/03/2023
MOTION SEQ. NO. 001

**DECISION, ORDER, and
JUDGMENT**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10

were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

New York Black Car Operators' Injury Compensation Fund, Inc. (NYBCOICF), also known as New York Black Car Fund, petitions pursuant to CPLR 7510 to confirm an arbitration award dated September 13, 2022, made by an arbitrator acting under the auspices of Arbitration Forums, Inc. (AFI), and pursuant to CPLR 7514 to direct the entry of judgment thereon. The respondent, Hertz Vehicles, LLC (Hertz), does not oppose the motion. The petition is granted, the award rendered under AFI Docket No. I068-06573-22-00 is confirmed, and NYBCOICF is entitled to enter a money judgment against Hertz in the principal sum of \$18,670.99, plus statutory interest from September 13, 2022.

NYBCOICF is the insurer of a motor vehicle owned and operated by Ayron Carmona, who operates the vehicle in his capacity as an employee of a limousine service. Hertz is the self-insurer of a motor vehicle that it owned and rented out to operator Drev Gooden. On July 24, 2019, Carmona was traveling northbound in the left lane of Soundview Avenue in Bronx, New York, with two passengers in his vehicle, when Gooden attempted to make a U-turn from a

parking spot located in the right lane of southbound Soundview Avenue in order to proceed northbound on Soundview Avenue. As Gooden attempted the U-turn, the oncoming Carmona vehicle struck Gooden's vehicle. Carmona made claim upon his insurer, NYBCOICF, for Workers' Compensation benefits in lieu of first-party no-fault benefits (see *A.I. Transp. v New Yprk State Ins. Fund*, 301 AD2d 380, 380 [1st Dept 2003]; *Arvatz v Empire Mut. Ins. Co.*, 171 AD2d 262, 268 [1st Dept 1991]; Insurance Law §§ 5102 [a], [b]; 5103 [a]; Workers' Compensation Law § 2[3]). NYBCOICF paid claims totaling \$18,670.99 on Carmona's behalf.

Inasmuch as the vehicle that NYBCOICF had insured and the Hertz vehicle were both "motor vehicle[s] used principally for the transportation of persons or property for hire" (Insurance Law § 5105[a]), NYBCOICF was entitled to seek a personal injury protection (PIP) or Workers' Compensation "loss transfer" from Hertz to reimburse it for the benefits that it had paid out to Carmona (see *A.I. Transp. v New Yprk State Ins. Fund*, 301 AD2d at 380). To obtain this loss transfer, NYBCOICF was required to establish that Gooden, as the operator of the vehicle insured by Hertz, was at fault in the happening of the accident. Insurance Law § 5105(b) provides that, where an insurer seeks to recover first-party benefits/PIP or Workers' Compensation loss transfer from the "insurer of any other covered person" on the ground that the other covered person was at fault in the happening of the accident, "[t]he sole remedy . . . shall be the submission of the controversy to mandatory arbitration pursuant to procedures promulgated or approved by the superintendent" of the New York State Department of Financial Services. Pursuant to those regulations, AFI has been designated as the exclusive forum for resolution of no-fault related arbitration matters (see 11 NYCRR 65.10). NYBCOICF thus demanded inter-insurer arbitration with Hertz before AFI.

In the September 13, 2022 arbitration award, an arbitrator acting under the auspices of AFI found Carmona's description of the accident to be credible, found in favor of NYBCOICF,

and concluded that Gooden was at 100% at fault in the happening of the subject accident. She thus determined that Hertz was obligated to pay NYBCOICF the sum of \$18,670.99.

Pursuant to CPLR 7510, the court “shall confirm an [arbitration] award upon application of a party made within one year after its delivery to him [or her] unless the award is vacated or modified upon a ground specified in section 7511.” The grounds specified in CPLR 7511 are exclusive (see *Bernstein Family Ltd. Partnership v Sovereign Partners, L.P.*, 66 AD3d 201 [1st Dept 2009]) and it is a “well-established rule that an arbitrator’s rulings, unlike a trial court’s, are largely unreviewable” (*Matter of Falzone v New York Cent. Mut. Fire Ins. Co.*, 15 NY3d 530, 534 [2013]). The instant proceeding to confirm the arbitration award was timely commenced on January 4, 2023 (see CPLR 304[a]). NYBCOICF contends that the award was proper in all respects and that no grounds exist for modification or vacatur. The court agrees, and concludes that NYBCOICF is entitled both to the confirmation of the award and the entry of a money judgment in the sum of \$18,670.99. The money judgment must bear interest from the date of the arbitration award, that is, from September 13, 2022 (see CPLR 5002; *Board of Educ. of Cent. School Dist. No. 1 of Towns of Niagara, Wheatfield, Lewiston & Cambria v Niagara-Wheatfield Teachers Assn.*, 46 NY2d 553, 558 [1979]; *Dermigny v Harper*, 127 AD3d 685, 686 [2d Dept 2015]; *Matter of Levin & Glasser, P.C. v Kenmore Prop., LLC*, 70 AD3d 443, 446 [1st Dept 2010]; *Matter of Gruberg v Cortell Group, Inc.*, 143 AD2d 39, 39 [1st Dept 1988]).


Accordingly, it is

ADJUDGED that the petition is granted, without opposition, and the arbitration award rendered in the matter entitled *New York Black Car Operators’ Injury Compensation Fund, Inc., also known as New York Black Car Fund v Hertz Vehicles, LLC, Arbitration Forums, Inc.*, Docket Number I068-06573-22-00, dated September 13, 2022, be, and hereby is, confirmed; and it is further,

ORDERED that the Clerk of the court shall enter a money judgment in favor of Black Car Operators' Injury Compensation Fund, Inc., also known as New York Black Car Fund, and against Hertz Vehicles, LLC, in the principal sum of \$18,670.99, with statutory interest at 9% per annum from September 13, 2022.

This constitutes the Decision, Order, and Judgment of the court.

6/16/2023
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input 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