

**New Millennium Pain & Spine Medicine PC v Geico
Cas. Co.**

2023 NY Slip Op 32393(U)

July 15, 2023

Supreme Court, New York County

Docket Number: Index No. 650208/2023

Judge: Shahabuddeen Abid Ally

Cases posted with a "30000" identifier, i.e., 2013 NY Slip
Op 30001(U), are republished from various New York
State and local government sources, including the New
York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official
publication.

SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. SHAHABUDDEN ABID ALLY PART 16TR

Justice

-----X

NEW MILLENNIUM PAIN & SPINE MEDICINE PC a/a/o
EDRISA BADJIE,

Petitioner,

- v -

GEICO CASUALTY COMPANY,

Respondent.

-----X

INDEX NO. 650208/2023

MOTION DATE 01/14/2023

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-10, 15-26
were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

Petitioner moves pursuant to CPLR § 7511 for an order: (1) vacating the December 29, 2022 Master Arbitrator Award that affirmed the No-Fault arbitration award dated December 5, 2022 and remanding the matter to a different arbitrator or, in the alternative, entering judgment for petitioner in the sum of \$3,793.60 along with 2% interest from the filing of the arbitration until entry of judgment and No-Fault statutory attorneys' fees; (2) awarding to petitioner reasonable attorneys' fees pursuant to 11 NYCRR §65-4.10(j)(4); (3) awarding to petitioner arbitration filing fees of \$115.00; and (4) awarding to petitioner costs and disbursements as taxed by the clerk of the court. Respondent has filed written opposition. Upon the above cited papers and for the reasons that follow, the petition is denied.

Background

Petitioner's assignor, Edrisa Badjie, was involved in a motor vehicle accident on November 5, 2021. During the period from February 3, 2022 and April 19, 2022, she underwent injection therapy and shockwave treatments at petitioner's facility due to injuries alleged to have

arisen from the accident. The claims were denied by respondent, either on fee schedule grounds or based upon a peer review which concluded the services were not medically necessary. On September 1, 2022, respondent issued a global denial to various medical providers, including petitioner, indicating that the policy was exhausted.

Petitioner sought arbitration and on December 5, 2022, a hearing was held before an arbitrator. The arbitrator found that respondent had sufficiently demonstrated that the policy limits had been exhausted as of July 1, 2022 and that as petitioner's claims were timely denied, they did not hold a place on the priority of payment line (petitioner's exhibit 6 at 2). The arbitrator concluded that petitioner was not entitled to payment and denied the claim.

Thereafter, petitioner sought review by the Master Arbitrator. In an award dated December 29, 2022, the Master Arbitrator affirmed the award in its entirety (petitioner's exhibit 8 at 3). Acknowledging the unsettled state of the law, the Master Arbitrator nonetheless reiterated the limited scope of review and concluded, "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" (*id.*)

Petitioner subsequently commenced the instant application.

Discussion

"It is well settled that a court may vacate an arbitration award only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power" (*Matter of Falzone [New York Cent Mut Fire Ins Co]*, 15 NY3d 530, 534 [2010]). Such enumerated limitations are set forth in CPLR § 7511, which provides that an

arbitration award may be vacated upon a finding that the rights of a party were prejudiced by (1) corruption, fraud, or misconduct in procuring the award; (2) the partiality of an arbitrator; (3) the arbitrator having exceeded their power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or (4) failure to follow the procedures set forth in Article 75 of the CPLR (CPLR § 7511[b][1][i]-[iv]). A party seeking to vacate an arbitration award bears a heavy burden, as “[a]n arbitration award must be upheld when the arbitrator ‘offer[s] even a barely colorable justification for the outcome reached’” (*Wien & Malkin, LLP v Helmsley-Spear Inc.*, 6 NY3d 471, 479 [2006])[citing *Matter of Andros Compania Maritima, S.A. [Marc Rich & Co, A.G.]*, 579 F2d 691, 704 [2d Cir 1978]].

Petitioner claims that when the bills were submitted to respondent, the policy had not yet exhausted and therefore the bills should have been paid pursuant priority of payment. Petitioner contends that the arbitrator’s failure to apply this standard constitutes a misapprehension of the governing law and therefore mandates vacatur. In opposition, respondent argues that petitioner fails to establish any of the grounds for vacatur articulated in CPRL § 7511 and therefore there is no basis to disturb the arbitrator’s decision.

On review of the documents presented, the Court finds that the arbitrator conducted a detailed review of the evidence and issued an award that contained more than a “colorable justification” for the outcome (*Wien & Malkin, LLP v Helmsley-Spear Inc.*, 6 NY3d 471, 479 [2006])[citing *Matter of Andros Compania Maritima, S.A. [Marc Rich & Co, A.G.]*, 579 F2d 691, 704 [2d Cir 1978]]. The arbitrator clearly set forth the evidence presented to her and the basis of her legal conclusion. Further, “[p]etitioner’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 [1st Dept 2011]).

The Court further finds that the Master Arbitrator applied the appropriate standard and affirmed the award accordingly. The Master Arbitrator acknowledged the limited scope of his review and found that the award had a rational basis. As the Court’s review is limited to that assessment, the Court is without authority to substitute its own weighing of evidence or make legal conclusions based thereon. Petitioner’s application to vacate the award must be denied. Accordingly, it is hereby:

ORDERED and **ADJUDGED**, that the application to vacate the arbitration award is denied and the petition dismissed; and it is further

ORDERED that respondent shall serve upon petitioner and upon the Clerk of the Court a copy of this decision and order with notice of entry within thirty days thereof; 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.

<u>7/15/2023</u>			
DATE		SHAH BUDDEEN ABID ALLY, A.J.S.C.	
CHECK ONE:	☒ CASE DISPOSED	☐ NON-FINAL DISPOSITION	
	☐ GRANTED	☒ DENIED	☐ GRANTED IN PART
APPLICATION:	☐ SETTLE ORDER		☐ OTHER
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE