

**Matter of American Tr. Ins. Co. v Office of the
Comptroller (NYC)**

2023 NY Slip Op 32583(U)

July 25, 2023

Supreme Court, New York County

Docket Number: Index No. 651082/2023

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

-----X

In the Matter of

AMERICAN TRANSIT INSURANCE COMPANY

Petitioner,

- v -

OFFICE OF THE COMPTROLLER (NYC),

Respondent.

-----X

INDEX NO. 651082/2023

MOTION DATE 05/05/2023

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

American Transit Insurance Company (ATIC) petitions pursuant to CPLR 7510 to confirm an arbitration award dated March 9, 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, Office of the Comptroller (NYC) (the Comptroller), does not oppose the petition. The petition is granted, the award rendered under AFI Docket No. 1068-12991-21-00 is confirmed, and ATIC is entitled to enter a money judgment against the City of New York in the principal sum of \$6,777.54, plus statutory interest from March 9, 2022.

ATIC is the insurer of a motor vehicle owned and operated by Pamela T. Mingo. The Comptroller is the self-insurer of a pick-up truck that the City of New York rented from Herc Rentals, Inc., and furnished to operator Alice D. Bennett. On July 21, 2017, Mingo was traveling eastbound in a middle lane of the Grand Central Parkway in Flushing, New York, just west of the Clearview Expressway exit, and immediately front of Bennett, when Bennett attempted to change lanes from the middle lane into the right lane. Bennett accelerated and began to enter the right lane, upon which she thereupon attempted to move her vehicle in front of a vehicle in

the right lane that was owned and operated by Renato Espinoza. According to statements that she made to a responding police officer, Bennett realized that Espinoza's vehicle was too close to her vehicle to permit her safely to move ahead of him in the right lane, at which point she abruptly attempted to change back into the middle lane, colliding both with the right rear of Mingo's vehicle and the front left of Espinoza's vehicle, essentially sandwiched between the two vehicles while straddling the broken line dividing the middle lane from the left lane.

Mingo made claim for the injuries she sustained in the accident upon her insurer, ATIC, which paid claims totaling \$6,777.54 either to her or on her behalf.

Inasmuch as Bennett's vehicle was a "motor vehicle weighing more than six thousand five hundred pounds unloaded" (Insurance Law § 5105[a]), ATIC was entitled to seek a personal injury protection (PIP) "loss transfer" from the Comptroller to reimburse it for the benefits that it had paid out to and on behalf of Mingo. To obtain this loss transfer, ATIC was required to establish that Bennett, as the operator of the vehicle insured by the Comptroller, 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 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, loss-transfer arbitration matters (see 11 NYCRR 65.10). ATIC thus demanded inter-insurer arbitration with the Comptroller before AFI.

In the March 9, 2022 arbitration award, an arbitrator acting under the auspices of AFI found Mingo's description of the accident and Bennett's admissions to be credible, found in favor of ATIC, and concluded that Bennett was at 100% at fault in the happening of the subject accident because she was negligent in attempting to change lanes, negligent in attempting to

pass Espinoza's vehicle, and negligent in attempting to return to her initial lane. She thus determined that the Comptroller was obligated to pay ATIC the sum of \$6,777.54.

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 March 1, 2023 (see CPLR 304[a]). ATIC contends that the award was proper in all respects and that no grounds exist for modification or vacatur. The court agrees, and concludes that ATIC is entitled both to the confirmation of the award and the entry of a money judgment in the sum of \$6,777.54. The money judgment must bear interest from the date of the arbitration award, that is, from March 9, 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 *American Transit Ins. Co. v Office of the Comptroller (NYC), Arbitration Forums, Inc.*, Docket Number I068-12991-21-00, dated March 9, 2022, be, and hereby is, confirmed; and it is further,

ORDERED that, within 30 days of the entry of this Order and Judgment, the petitioner shall personally deliver a copy of this Order and Judgment with notice of entry to the New York City Corporation Counsel, 100 Church Street, New York, New York 10007; and it is further,

ORDERED that, upon the petitioner's submission of proof of service of a copy of this Order and Judgment with notice of entry upon the New York City Corporation Counsel, the Clerk of the court shall enter a money judgment in favor of American Transit Insurance Company and against the City of New York in the principal sum of \$6,777.54, with statutory interest at 9% per annum from March 9, 2022

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

7/25/2023
DATE


JOHN J. KELLEY, J.S.G.

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