

**American Tr. Ins. Co. v Forest Hills Healthcare
Physician P.C.**

2023 NY Slip Op 32593(U)

July 21, 2023

Supreme Court, Kings County

Docket Number: Index No. 502650/2023

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York on the 21st day of July 2023

HONORABLE FRANCOIS A. RIVERA

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AMERICAN TRANSIT INSURANCE COMPANY,

DECISION AND ORDER

Petitioner,

Index No.: 502650/2023

-against-

Oral Argument: 6/8/23

FOREST HILLS HEALTHCARE PHYSICIAN P.C.
a/a/o MIGUEL PACHECO

Respondent

-----X

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of petition and petition filed on January 26th, 2023, under motion sequence one by American Transit Insurance Company (hereinafter ATIC or petitioner) pursuant to CPLR Article 75, for an order vacating an award of a master arbitrator which affirmed, in its entirety, an award of a lower arbitrator in the amount of \$4,810.84 in favor of the respondent Forest Hills Healthcare Physician P.C.

- Notice of Petition
- Petition
- Exhibits A to D
- Affirmation of Service

Recitation in accordance with CPLR 2219 (a) of the papers considered on the cross-petition, answer and affirmation in opposition filed on February 20, 2023 under motion sequence two by respondent Forest Hills Healthcare Physician P.C.

- Notice of cross petition
- Respondent's answer
- Affirmation in opposition and in support of the cross motion

Exhibits A-C

-Affirmation in opposition to the cross petition

BACKGROUND

On January 26, 2023, ATIC commenced the instant special proceeding pursuant to CPLR Article 75 to vacate an award of a master arbitrator in favor of the respondent Forest Hills Healthcare Physician P.C., A/A/O Miguel Pacheco (hereinafter respondent). The respondent has filed a cross petition which also serves as an answer and opposition to the petition.

The petition alleges the following salient facts. The petitioner issued a New York insurance policy to Miguel Pacheco which included a no-fault endorsement. The no-fault endorsement provided coverage to any eligible injured person for all necessary medical expenses, lost wages and other expenses resulting from a motor vehicle accident up to the minimum statutory amount of \$50,000.00.

On October 4, 2019, while the policy was in effect, Miguel Pacheco (hereinafter Pacheco) was injured in a motor vehicle accident (hereinafter the subject accident). Pacheco put the petitioner on notice of the subject accident and the injuries that it caused. Pacheco sought medical treatment for those injuries and the respondent was one of the medical providers that allegedly rendered treatment to him. Pacheco assigned the right to collect no-fault benefits to the respondent in exchange for the medical treatment she allegedly received.

The respondent submitted no-fault claims to the petitioner seeking reimbursement for medical services rendered to Pacheco totaling \$4,810.84 for services provided during October 10, 2019, through December 24, 2019. The petitioner did not pay and denied the claim contending that the alleged injuries were not medically necessary based on a peer review by Dr. Peter Chiu.

The respondent initiated an arbitration claiming entitlement to \$4,810.84. The arbitration matter was decided by Arbitrator Jeffrey Held, Esq. (hereinafter the no-fault arbitrator) who awarded the respondent the full amount claimed of \$4,810.84. The award was based primarily on the untimeliness of the petitioner's denials and verification requests. The no-fault arbitrator determined that ATIC's defenses were precluded and awarded the entire amount at issue to the medical provider. Thereafter, the petitioner filed for Master Arbitration. Master Arbitrator Jonathan Hill (hereinafter the master arbitrator) upheld the lower arbitration award in its entirety.

The petitioner contends that the arbitration award was arbitrary and capricious, irrational and without a plausible basis. The petitioner contends that the claim was properly and timely denied for lack of medical necessity.

The respondent filed a cross petition, answer and opposition to the petition seeking, among other thing confirmation of the master arbitrator's award.

LAW AND APPLICATION

A court reviewing the award of a master arbitrator is limited to the grounds set forth in CPLR Article 75, which include, in this compulsory arbitration, the question of whether

the determination had evidentiary support, was rational, or had a plausible basis (*see Matter of Petrofsky [Allstate Ins. Co.]*, 54 NY2d 207, 212 [1981]). Notably, the master arbitrator's review power is broader than that of the courts' because it includes the power to review for errors of law (*see id.* at 211—212; 11 NYCRR 65—4.10[a][4]). In contrast, the courts generally will not vacate an arbitrator's award where the error claimed is the incorrect application of a rule of substantive law, unless it is so irrational as to require vacatur (*Matter of Smith [Firemen's Ins. Co.]*, 55 NY2d 224, 232 [1982]; *see also Matter of Liberty Mut. Ins. Co. v Spine Americare Med.*, 294 AD2d 574, 576 [2d Dept 2002]).

The petitioner's evidentiary submissions include, among other things, the no-fault arbitrator's award, and the master arbitrator's award. The no-fault arbitrator set forth the following in the award letter. The no fault arbitrator found that ATIC's evidentiary submission failed to establish that the medical services rendered to Pacheco were not medically necessary. The no-fault arbitrator determined that the petitioner failed to meet the burden of proof in support of its lack of medical necessity defense and, accordingly, issued an award in favor of the respondent in the amount of \$4,810.84.

The standard for Article 75 court scrutiny of a master arbitrator's review of a hearing arbitrator's award in terms of whether there was an error of law is whether it is so irrational as to require vacatur (*Am. Transit Ins. Co. v Right Choice Supply, Inc.*, 78 Misc.3d 890, [Sup Ct Feb. 9, 2023], citing *Matter of Smith v Firemen's Ins. Co.*, 55 NY2d 224, 232 [1982]).

Here, the master arbitrator reviewed the record and award of the no-fault arbitrator and stated the following findings. The award by the no-fault arbitrator did not violate the regulations. It was within the province of the no-fault arbitrator to determine what evidence to accept or reject and what inferences should be drawn based on the evidence. Upon reviewing the record and evidence submitted, the master arbitrator did not find the no-fault arbitrator's interpretation of the evidence and applicable law pertaining to this dispute to be arbitrary, capricious, or contrary to law. Consequently, the master arbitrator upheld the award to the respondent in the amount of \$4,810.84

The instant petition is a special proceeding. The procedure for special proceedings contemplates that the petition will be accompanied by affidavits demonstrating the evidentiary grounds for the relief requested (see CPLR 403[a]). It is settled that a special proceeding is subject to the same standards and rules of decision as apply on a motion for summary judgment, requiring the court to decide the matter upon the pleadings, papers, and admissions to the extent that no triable issues of fact are raised (CPLR 409 [b]; *Saadia Safdi Realty, LLC v Melvin Press*, 207 AD3d 633, 635 [2d Dept 2022], citing *Matter of Arben Corp. v Durastone, LLC*, 186 AD3d 599 at 600 [2d Dept 2020]).

The evidentiary submissions and legal reasoning proffered by the petitioner did not make a prima facie showing that the no-fault arbitrator's award or the master arbitrator's award was either arbitrary or capricious. To the contrary, the petitioner's evidentiary submissions established that the no-fault arbitrator's award and the master arbitrator's

affirmance of the award was based on sound and well-reasoned analysis of the evidence submitted and upon the proper application of the pertinent laws and regulations.

Consequently, the respondent's cross petition seeking confirmation of the master arbitrator's award is granted. Additionally, the respondent request for an attorney's fee of \$1,000 along with an additional \$200 appearance fee, for a total of \$1,200 is granted.

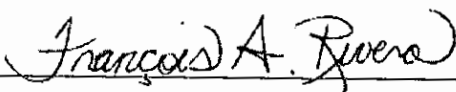
CONCLUSION

The petition by petitioner American Transit Insurance Company for an order pursuant to Article 75 of the CPLR vacating an Arbitration Award and a Master Arbitration is denied and the petition is dismissed.

The cross petition by the respondent to confirm the Master Arbitration Award and for an attorney's fee of \$1,000 along with an additional \$200 appearance fee, for a total of \$1,200 is granted.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.