

**American Tr. Ins. Co. v Quality Med. & Surgical
Supplies LLC**

2023 NY Slip Op 32660(U)

July 21, 2023

Supreme Court, Kings County

Docket Number: Index No. 523082/2022

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

-----X
AMERICAN TRANSIT INSURANCE COMPANY,

Petitioner,

- against -

QUALITY MEDICAL & SURGICAL SUPPLIES LLC,
A/A/O GLORIA COMPOVERDE,

Respondent.

-----X

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of petition and petition filed on August 10, 2022, under motion sequence number 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 \$806.64 in favor of the respondent Quality Medical & Surgical Supplies LLC, A/A/O Gloria Compoverde.

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

By Notice of Petition, filed on August 10, 2022, under motion sequence number one, Petitioner sought an order pursuant to CPLR 7511, Insurance Law 5016(c), 11 NYCRR 65-4.10(h)(1)(i) and 11 NYCRR 65-4.10(h)(2) for a vacatur of the Arbitration Award assigned number 99-21-1226-0727 by the American Arbitration Association.

BACKGROUND

On August 10, 2022, ATIC commenced the instant special proceeding pursuant to CPLR Article 75 to vacate an award of a master arbitrator in favor of the respondent Quality Medical &

DECISION & ORDER

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Oral Argument: 6/8/2023

Cal. No.: 17, Ms. No.: 1

Surgical Supplies LLC, A/A/O Gloria Compoverde (hereinafter respondent). The respondent did not appear or submit opposition to the petition.

The petition alleges the following salient facts. The petitioner issued a New York insurance policy to Gloria Compoverde 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 May 30, 2018, while the policy was in effect, Gloria Compoverde (hereinafter Compoverde) was injured in a motor vehicle accident (hereinafter the subject accident). Compoverde put the petitioner on notice of the subject accident and the injuries that it caused. Compoverde sought medical treatment for those injuries and the respondent was one of the medical providers that allegedly rendered treatment to him. Compoverde 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 Compoverde totaling \$806.64 for services provided on August 1, 2018. The petitioner did not pay and denied the claim contending that Compoverde is eligible for worker's compensation benefits because she was injured in the course of her employment.

The respondent initiated an arbitration claiming entitlement to \$804.64. The arbitration matter was decided by Arbitrator Rhonda Berry, Esq. (hereinafter the no-fault arbitrator) who awarded the respondent the full amount claimed of \$804.64. The petitioner contended that there was sufficient evidence demonstrating that Compoverde was working as a livery driver at the time of the subject accident. The no-fault arbitrator found that the petitioner's contention was

based solely upon speculation based on the following facts, among others. The evidentiary submission did not contain a police report, MV 104 or other documentation providing the license plate for the insured vehicle. While there was a declaration page of the policy of insurance which suggested that policy of insurance was for is a livery or "for hire" vehicle, no license plate number was indicated and no affidavit explaining the nature of the policy was provided. The no fault arbitrator concluded that the petitioner's evidence was insufficient to establish potential merit to their defense that Compoverde may have been working at the time of the accident to trigger a determination by the Worker's Compensation Board. The no fault arbitrator awarded the entire amount at issue to the medical provider.

Thereafter, the petitioner filed for Master Arbitration. Master Arbitrator Marilyn Felenstein, Esq. (hereinafter the master arbitrator) upheld the lower arbitration award in its entirety. The petitioner contends that the arbitration award and the Master Arbitrator's upholding of the award arbitrary and capricious, irrational and without a plausible basis.

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 Compoverde was eligible for worker's compensation benefits because she was injured in the course of her employment. The no-fault arbitrator determined that the petitioner failed to meet the burden of proof in support of its contention and, accordingly, issued an award in favor of the respondent in the amount of \$804.64.

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 \$804.64

The instant petition is a special proceeding. The procedure for special proceedings contemplates that the petition will be accompanied by affidavits demonstrating the evidentiary

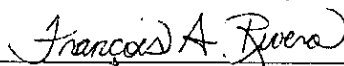
grounds for the relief requested (see CPLR 403[a]). It is settled that a special proceeding is subject to the same standards and rules of decision as apply on a motion for summary judgment, requiring the court to decide the matter upon the pleadings, papers, and admissions to the extent that no triable 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 affirmation 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.

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.

ENTER:



J.S.C.

HON. FRANCOIS A. RIVERA
J.S.C.