

Nostrand Drugs RX, Inc. v Liberty Mut. Ins. Co.

2023 NY Slip Op 32952(U)

August 23, 2023

Supreme Court, New York County

Docket Number: Index No. 652754/2023

Judge: Shahabuddeen Abid Ally

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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:	<u>HON. SHAHABUDDEN ABID ALLY</u>	PART	16TR
	<i>Justice</i>		
	-----X	INDEX NO.	<u>652754/2023</u>
	NOSTRAND DRUGS RX, INC. a/a/o JEAN ESTABINE,	MOTION DATE	<u>07/12/2023</u>
	Petitioner,	MOTION SEQ. NO.	<u>001</u>
	- v -		
	LIBERTY MUTUAL INS. CO.,	DECISION + ORDER ON	
	Respondent.	MOTION	
	-----X		

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-8, 10 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Petitioner moves pursuant to CPLR § 7511 for an order vacating the arbitration awards issued in the matter of AAA Case No. 99-21-1200-7354. Respondent has not filed opposition nor otherwise appeared in this proceeding. Upon the above cited papers, the petition is denied.

Background

Petitioner’s assignor was involved in a motor vehicle accident on December 26, 2020, after which he was prescribed lidocaine ointment for injuries sustained in the accident. Respondent provided partial payment of \$1,528.68 and timely denied the remainder based on the fee schedule. Respondent also claimed that the applicable policy had only \$229.93 left. Assignor subsequently sought re-issuance of the \$1,528.68 check after claiming the first check had been stolen and cashed. After hearing and based upon the documents submitted, oral argument of the parties, and the decisions of related cases in which the same assignor claimed theft of an

insurance check, the arbitrator found that the assignor was not entitled to additional payment and denied the claim (exhibit 3).

Thereafter, petitioner sought review from a master arbitrator. The master arbitrator affirmed the award in its entirety, finding that the lower arbitrator's denial of the claim was neither arbitrary, capricious, irrational, nor incorrect as a matter of law. The master arbitrator further noted the lack of controlling case law on this issue and as such the lower arbitrator's decision could not have been deemed arbitrary, capricious, irrational, or incorrect as a matter of law had it gone the other way (exhibit 4). 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 seeks to vacate the awards as arbitrary, capricious, irrational, and “in violation of the letter and spirit of the No-Fault Law” (Affirmation in Support at ¶ 3).¹ Petitioner argues that the master arbitrator incorrectly summarized the state of the law, and that the doctrine of equitable estoppel compels the opposite outcome.

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 summarized the state of the law and engaged in an in-depth discussion about the facts of this particular case, as well as recognizing the determinations made by other arbitrators in related cases. The arbitrator clearly set forth the evidence presented to him and the case law upon which the award relied. The Court does not find that the cases cited by petitioner necessarily compel a different outcome under these facts.

The Court further finds that the master arbitrator applied the appropriate standard and affirmed the award accordingly. 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. The Court finds no other basis on which to vacate the award. Petitioner’s application to vacate the award must be denied.

¹ The Court notes that some portions of petitioner’s papers erroneously characterize the procedural posture of the arbitration; for example, in the Petition at paragraph 13, petitioner refers to the master arbitrator vacating the lower arbitrator’s award and remanding for further proceeding. The same reference is contained in paragraph 2 of the Affirmation in Support. Based on petitioner’s substantive arguments, however, the Court proceeds on the assumption that petitioner’s intent was to challenge the lower arbitrator’s denial of the claim and the master arbitrator’s award affirming the denial.

Further, where an application to vacate or modify an arbitration award is denied, CPLR § 7511(e) mandates that the reviewing court confirm the award (*Blumenkopf v Proskauer Rose LLP*, 95 AD3d 647, 648 [1st Dept 2012]). The award is therefore confirmed.

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 and **ADJUDGED**, that the award is confirmed; and it is further

ORDERED that the Clerk of the Court shall enter judgment in accordance with the arbitration award; and it is further

ORDERED that any requested relief not expressly addressed herein has been considered and is denied.

This constitutes the decision and order of the Court.

<u>8/23/2023</u> DATE	 SHAHABUDEEN ABID ALLY, A.J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	OTHER