

**Preferred Mut. Ins. Co. v New York Black Car
Operators' Injury Compensation Fund**

2023 NY Slip Op 33081(U)

September 6, 2023

Supreme Court, New York County

Docket Number: Index No. 653481/2023

Judge: Arlene Bluth

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
 COUNTY OF NEW YORK: PART 14

-----X	
PREFERRED MUTUAL INSURANCE COMPANY,	INDEX NO. <u>653481/2023</u>
Petitioner,	MOTION DATE <u>N/A</u>
- v -	MOTION SEQ. NO. <u>001</u>
THE NEW YORK BLACK CAR OPERATORS' INJURY COMPENSATION FUND A/K/A NEW YORK BLACK CAR FUND, ARBITRATION FORUMS	
Respondent.	DECISION + ORDER ON MOTION
-----X	

HON. ARLENE P. BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for VACATE - AWARD.

The petition to vacate the subject arbitration awards dated July 11, 2023 and July 14, 2023 is denied. Pursuant to CPLR 7511(e), the Court confirms the awards.

Background

This proceeding arises out of arbitration held before respondent Arbitration Forums regarding benefits paid by the respondent, New York Black Car Fund (“Black Car Fund”), after a collision involving these parties’ insured drivers. Petitioner brought a previous case to stay the arbitration and this Court denied the stay, concluding that “nothing prevents petitioner from raising arguments about the limitations period with respect to specific payments in the arbitration.”¹

¹ *Preferred Mutual Ins. Co. v The New York Black Car Operators’ Injury Compensation Fund a/k/a New York Black Car Fund* (Index No. 651342/2023, NYSCEF Doc No. 15).

According to the arbitration rules, all documents ahead of the arbitration hearing were to be uploaded to an online portal (NYSCEF Doc. No. 24 at 6 [affidavit of Timothy McKernan, operations manager for respondent Arbitration Forums, Inc.]). Responses (which respond to the claim, similar to an answer in litigation) must be filed by the “response due date” (*id.* ¶ 5). Arbitration Forums insists that petitioner never uploaded a response and instead uploaded its arguments as “evidence” (*id.* ¶ 6).

Petitioner alleges that it properly uploaded its opposition papers which included its assertion that certain payments in the arbitration were time-barred. It maintains claims that it received confirmation that its documents were submitted (NYSCEF Doc. No. 1 at 4). The final awards, issued in two separate decisions dated July 11, 2023 and July 14, 2023, concluded that Black Car Fund was entitled to all payments in dispute, totaling \$45,481.87 (NYSCEF Doc. Nos. 3, 4).

Petitioner filed an inquiry with Arbitration Forums questioning these awards. Arbitration Forums informed petitioner that the award was issued on default as petitioner’s opposition papers were uploaded incorrectly as evidence without a corresponding answer (NYSCEF Doc. No. 12). Because there was no response/answer, the claims were considered on default (that is, the documents uploaded as evidence could not be considered without a response/answer).

Petitioner now seeks to vacate the arbitration award and contends that the arbitrator deliberately ignored its opposition papers, violating petitioner’s due process rights pursuant to CPLR 7506 (NYSCEF Doc. No. 1 at 4). Petitioner claims it received confirmation that its documents were uploaded (*id.* at 5).

In opposition, Black Car Fund contends that petitioner failed to file an answer/response to the underlying arbitration. Because petitioner did not follow the correct procedures for uploading

documents, and never filed an answer, it waived its statute of limitations defense. Black Car Fund further claims that petitioner has the burden to show that the arbitrator was incorrect as a matter of law but petitioner's own error in handling the arbitration does not entitle petitioner to vacate the arbitration award (*id.* at 3). Black Card Fund insists that the arbitrator did nothing wrong. Additionally, Black Car Fund argues that Arbitration Forums should not be a named respondent because the applicable regulations bar naming designated arbitrators as a party in court proceedings (*id.*).

In a separate opposition, Arbitration Forums makes similar contentions to Black Car Fund and insists that petitioner simply failed to follow the proper procedures as outlined in the NY Personal Injury Protection ("PIP") Rules for arbitrations. According to Arbitration Forums, petitioner filed its papers as evidence without filing a response/answer in violation of the rules. Finally, it maintains that state regulations preclude petitioner from including Arbitration Forums as a party in a court proceeding related to an arbitration award (*id.* at 4).

Discussion

"CPLR 7511 provides just four grounds for vacating an arbitration award, including that the arbitrator exceeded his power, which occurs only where the arbitrator's award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power. Mere errors of fact or law are insufficient to vacate an arbitral award. Courts are obligated to give deference to the decision of the arbitrator, . . . even if the arbitrator misapplied the substantive law in the area of the contract" (*NRT New York LLC v Spell*, 166 AD3d 438, 438-39, 88 NYS3d 34 [1st Dept 2018] [internal quotations or citations omitted]).

The Court finds that the arbitrator acted rationally in its award to Black Car Fund. According to NY PIP Rule (2)(iv), “[u]pon receipt of [Arbitration Forum]’s notice of filing, the responding company shall answer online via AF’s website by the Response Due Date. Before the initial response due date expires, a responding company is entitled to one extension of its response due date.”

Mr. McKernan (operations manager for Arbitration Forums) observes that petitioner did not upload the documents properly and so awards were issued in respondent Black Car Fund’s favor (NYSCEF Doc. No. 24 at 6). Petitioner did not properly file an answer to the initial claim and only uploaded its opposition papers (albeit with the wrong label) after the responsive deadline. Petitioner therefore waived its statutory limitation defense.

According to the screenshot of the docket, petitioner requested a deferment for its time to answer that ended on May 11, 2023 (NYSCEF Doc. No. 13). Thereafter, on May 28, 2023, the evidence log shows that a notification titled “response not submitted event sent to PREFERRED MUTUAL INS CO.” was sent to petitioner (*id.*). On June 3, 2023, the evidence log shows the same notification was sent again (*id.*). On June 13, 2023, the response time expired. The documents petitioner claims to have uploaded were filed on June 28, 2023, at least 15 days after the response expiration date. Petitioner did not show any proof that there was extra time to file its response, and it did not address why it took nearly 25 days after the last reminder was sent to upload any responsive documents.

The fact is that respondent Arbitration Forums has the discretion to reject and ignore petitioner’s improper and untimely filings (*Disston Co. v Aktiebolag*, 176 AD2d 679, 679 [1st Dept 1991] [affirming an arbitrator’s decision to deny an adjournment request and noting that a party seeking to vacate an arbitration award must show that the arbitrator abused his discretion

so as to constitute misconduct]). The Court finds that, here, Arbitration Forums was entitled to demand compliance with its rules.

Summary

Petitioner caused the instant situation by not following the forum's rules. By not properly filing an answer/response, it never raised the statute of limitations issue. Just because a computer generates an automatic acknowledgement that documents were successfully uploaded does not mean that the forum's deadlines and rules should be ignored. This is not a case where the arbitrator had some nefarious scheme; rather, this is a case where the petitioner ignored deadlines and rules of the forum and instead filed what it wanted to file when it wanted to file it. The forum had every right to issue defaults under these circumstances and so the petition is denied.

Moreover, pursuant to CPLR 7511(e), the Court confirms the two awards in favor of respondent Black Car Fund.


Accordingly, it is hereby

ORDERED that the petition to vacate the subject arbitration awards dated July 11, 2023 and July 14, 2023 is denied; and it is further

ORDERED that the proceeding is dismissed as against respondent Arbitration Forums, Inc. (incorrectly sued herein as Arbitration Forums) and the Clerk shall enter judgment accordingly in favor of this respondent and against petitioner along with costs and disbursements upon presentation of proper papers therefor; and it is further

ORDERD that the Clerk shall enter judgment in favor of respondent THE NEW YORK BLACK CAR OPERATORS' INJURY COMPENSATION FUND A/K/A NEW YORK

BLACK CAR FUND and against petitioner in the amount of \$45,481.87 (the combined amount of the two awards) plus interest from July 14, 2023 along with costs and disbursements upon presentation of proper papers therefor.

9/6/2023		
DATE		ARLENE BLUTH, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART <input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE