

**Matter of Floral Park Drugs, Inc. v Nationwide Gen.
Ins. Co.**

2023 NY Slip Op 33519(U)

October 7, 2023

Supreme Court, New York County

Docket Number: Index No. 651217/2023

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS

PART 10M

Justice

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INDEX NO. 651217/2023

In the Matter of:

FLORAL PARK DRUGS, INC a/a/o MARIA QUINONEZ,

**MOTION DATE 03/08/2023,
3/28/2023**

Petitioner,

MOTION SEQ. NO. 001

- v -

NATIONWIDE GENERAL INS. CO.,

**DECISION + ORDER ON
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24

were read on this motion to/for VACATE AWARD/JUDGMENT, CROSS-PETITION
CONFIRM AWARD/JUDGMENT.

Upon the foregoing documents, the court denies Petitioner Floral Park Drugs, Inc a/a/o Maria Quinonez’s (“Petitioner”) Verified Petition to vacate a master arbitrator’s award and the court grants Respondent Nationwide General Ins. Co.’s (“Respondent”) Verified Cross-Petition to confirm the master arbitrator’s award.

Petitioner’s assignor, Maria Quinonez, was allegedly injured in an automobile accident on July 22, 2020. Respondent’s insurance policy provided for No-Fault benefits, including coverage for prescription drugs. Petitioner submitted bills to Respondent for reimbursements in the amount of \$8,466.00 for dispensing Lidocaine 5% Ointment. Respondent denied payment because the prescription was not an electronic prescription for the medication as required by New York State law. Respondent stated that since there was no electronic prescription, there was no valid prescription for the medication and that the medication should never have been

dispensed. Therefore, Petitioner was not entitled to No-Fault benefits because it dispensed medication without a legitimate prescription.

The claim was submitted to arbitration and in an Arbitration Award, dated November 12, 2022, the lower arbitrator denied the claim because there was no electronic prescription as required by New York Public Health Law § 281(3) and found that the non-electronic prescription was invalid. Therefore, the lower arbitrator denied the claim for reimbursement under No-Fault Law. Additionally, the doctor who prescribed the medication testified in substance that she did not provide an electronic prescription because she believed the medication to be available over-the-counter and so the patient would not have to pay the \$20.00 for the medication. It should be noted that Respondent was billed for service on February 24, 2021, in the amount of \$2,283.00, April 20, 2021, in the amount of \$3,900.00 and on July 13, 2021, in the amount of \$2,283.00, which was denied on a 120-day defense.

Petitioner appealed. Upon review of the award, in a Master Arbitration Award, dated December 28, 2022, the master arbitrator affirmed the lower arbitrator's award and determined in substance that New York's Insurance Law allows reimbursement for prescription medications, but not over-the-counter medications. The master arbitrator affirmed the lower arbitrator's denial of the claim and determined that since the prescription was not in electronic form, it was not a valid prescription medicine within the meaning of the statute and was not reimbursable.

Petitioner's Verified Petition seeks an order vacating the master arbitration award, pursuant to CPLR 7511, remanding the matter for further proceedings and for attorney's fees. Petitioner argues in substance that the master arbitrator's award was arbitrary, capricious, irrational, in violation of No-Fault law, contrary to established law and was so imperfectly executed that a final and definite award upon the subject matter submitted was not made.

Petitioner further argues in substance that Respondent's defense against payment of the bill was not contained within the No-Fault regulations and that the master arbitrator erred on his interpretation of the relevant law regarding whether the denial was proper.

Respondent's Verified Cross-Petition seeks an order denying Petitioner's Verified Petition to vacate the award and for an order confirming the award, pursuant to CPLR 7510 and 7511(e). Respondent argues in substance that Petitioner failed to demonstrate any valid basis upon which to vacate or modify the master arbitrator's award. Respondent further argues that Petitioner failed to cite to any legal authority to support its claim that it was permitted to be reimbursed for a drug dispensed without a valid prescription. Respondent argues that the master arbitrator's award was not arbitrary and capricious, nor was it incorrect as a matter of law. Additionally, Respondent argues that the court previously decided the same issue and confirmed the award in *Floral Park Drugs, Inc. v. Nationwide General Ins. Co.* (Sup Ct, NY County, March 8, 2023, Engoron, J., index No. 653663/2022).

Pursuant to CPLR 7511(b)(1), an arbitration award shall be vacated by a party who participated in the arbitration or who was served with a notice of intention to arbitrate if the court finds that the rights of a party were prejudiced by "(i) corruption, fraud or misconduct in procuring the award;" (ii) partiality of an arbitrator appointed as a neutral . . . ;" (iii) an arbitrator "exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made;" or (iv) failure to follow the applicable procedure set forth in the CPLR, unless the party moving to vacate the award continued with the arbitration with notice of the defect, without objecting to the defect (CPLR 7511[b][1][i]-[iv]).

The court shall confirm an arbitration award "upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground

specified in section 7511” (CPLR 7510). Upon the denial of a motion to vacate or modify an arbitration award, the court shall confirm the award (CPLR 7511[e]).

Courts are limited to the grounds for vacatur set forth in CPLR 7511 and an award cannot be vacated based on legal or factual errors, or the lack of reasoning or calculations to justify the award (*see Lentine v Fundaro*, 36 AD2d 539, 539 [2d Dept 1971]; *Burt Bldg. Materials Corp. v Local 1205*, 18 NY2d 556, 558 [1966]). Courts “should not assume the role of overseers to mold the award to conform to their sense of justice,” nor can a court substitute its own judgment for that of an arbitrator merely because it believes it has a better interpretation (*Wien & Malin LLP v Helmsley-Spear, Inc.*, 6 NY3d 471, 479-80 [2006]).

An arbitration award made after all parties have participated “will not be overturned merely because the arbitrator committed an error of fact or of law” (*Motor Vehicle Accident Indemnification Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223 [1996]). To be upheld, a compulsory arbitration award must have evidentiary support or other basis in reason, as may be appropriate, and appearing in the record, and cannot be arbitrary and capricious (*id.*; *Mt. St. Mary’s Hosp. of Niagara Falls v Catherwood*, 26 NY2d 493, 508, [1970]).

Here, the court finds that Petitioner failed to demonstrate that it was entitled to vacatur of the master arbitrator’s award, nor for any of the additional relief requested. The court finds that the master arbitrator’s award was not arbitrary and capricious, incorrect as a matter of law, nor did it exceed his power or so imperfectly execute it that a final and definite award upon the subject matter submitted was not made. Even if the court believed that the master arbitrator misapplied the law, then the court would still decline to vacate the award as the master arbitrator’s reasoning was rational and consistent with the material facts and controlling authority.

Therefore, the court denies Petitioner’s Verified Petition to vacate the award, the court dismisses Petitioner’s Verified Petition. The court grants Respondent’s Verified Cross-Petition to confirm the award and the court confirms the master arbitrator’s award.

The court considered all additional arguments raised by the parties which were not specifically discussed herein and the court denies any additional request for relief not expressly granted herein.

As such, it is hereby

ORDERED and ADJUDGED that the court denies Petitioner Floral Park Drugs, Inc a/a/o Maria Quinonez’s Verified Petition to vacate a master arbitrator’s award and the court dismisses Petitioner’s Verified Petition with prejudice; and it is further

ORDERED and ADJUDGED that the court grants Respondent Nationwide General Ins. Co.’s Verified Cross-Petition to confirm the master arbitrator’s award and the court confirms the Master Arbitration Award, dated December 28, 2022.

This constitutes the decision and order of the court.


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<u>10/7/2023</u> DATE		<u>ERIKA M. EDWARDS, J.S.C.</u>
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