

**American Tr. Ins. Co. v Nexray Med. Imaging PC**

2023 NY Slip Op 33678(U)

October 4, 2023

Supreme Court, Kings County

Docket Number: Index No. 502813/2023

Judge: Ingrid Joseph

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This opinion is uncorrected and not selected for official publication.

At an IAS Part 83 of the Supreme Court of the State of New York held in and for the County of Kings at 360 Adams Street, Brooklyn, New York, on the 4<sup>th</sup> day of Oct. 2023.

PRESENT: HON. INGRID JOSEPH, J.S.C.  
SUPREME COURT OF THE STATE OF  
NEW YORK COUNTY OF KINGS

-----X  
AMERICAN TRANSIT INSURANCE COMPANY,  
Petitioner(s)

Index No: 502813/2023  
Motion Seq. 1-2

-against-

**ORDER**

NEXRAY MEDICAL IMAGING PC D/B/A SOUL  
RADIOLOGY, A/A/O MONAIRE THOMPSON,  
Respondent(s)  
-----X

The following papers read herein:

Petition/Affirmation in Support/Affidavits Annexed/Exhibits Annexed  
Cross-Motion/Affirmation In Support/Affidavits Annexed/Exhibits Annexed

Nos.:  
1-11; 14  
12-13; 15

In this matter Petitioner American Transit Insurance Company (“Petitioner”) seeks an order and judgment pursuant to CPLR 7511 vacating an arbitration award rendered in favor of the Respondent Nexray Medical Imaging PC D/B/A Soul Radiology A/A/O Monaire Thompson (“Respondent”) in the amount of \$2,417.40. Respondent filed a cross-petition seeking the confirmation of the arbitration award pursuant to CPLR 7510, interest at a rate of 2% from June 10, 2021, until the entry of judgment, and attorneys’ fees and costs.

This action was initiated by a Petition filed on January 1, 2021. This action stems from a motor vehicle accident that took place on March 11, 2020. Respondent submitted no-fault claims totaling \$ 2,417.40 for dates of medical service received to Monaire Thompson on May 15, 2020 through May 28, 2020. Petitioner asserts that upon a review of the relevant files, the claims were denied because the alleged injuries were not causally related to the motor vehicle accident. The arbitration matter was decided by Arbitrator Gary Peters, Esq. (“Arbitrator Peters”) and affirmed by Master Arbitrator Robert Trestman, Esq. (“Master Arbitrator Trestman”) who upheld the arbitration award. Petitioner argues that Arbitrator Peters award was incorrect as a matter of law and should not have been upheld by Master Arbitrator Trestman. Petitioner states that Arbitrator Peters applied collateral estoppel to justify the award but merely noted that a prior award had

addressed the documents that formed the basis of the defense and did not discuss whether any of the 4 conditions had been met in order for collateral estoppel to apply.

In opposition, Respondent argues that Arbitrator Peter made a factual determination that Assignor's injury was caused by the accident and was necessary and was upheld because there was a rational basis for the determination. Therefore, Petitioner has failed to demonstrate how Master Arbitrator Trestman's assessment of the award warrants vacatur pursuant to Article 75.

In support of its cross-motion, Petitioner Respondent argues that it is entitled to mandatory and statutory attorney fees pursuant to 11 NYCRR 65-4.10(j)(4) "for services rendered in connection with...a court appeal from a master arbitration award and any further appeals, shall be fixed by the court adjudicating the matter." Respondent asks for leave to serve an affirmation in order to set forth its reasonable attorneys' fees in defending this action. In opposition, Petitioner argues that the Respondent's claims of entitlement to additional attorneys' fees must be limited to the hourly rate established by 11 NYCRR § 65-4.6(d).

CPLR 7511 provides that a Plaintiff can file a petition to vacate an arbitration award if the court finds that the rights of that party were prejudiced by: (i) corruption, fraud or misconduct in procuring the award; or (ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; or (iii) an arbitrator, or agency or person making the award 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 procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection. Judicial review of arbitration awards is extremely limited (*Wien & Malkin LLP v Helmsley-Spear, Inc.*, 6 N.Y.3d 471 [2006]; *Tauber v Gross*, 216 A.D.3d 1066 [2d Dept. 2023]; see *Jurcec v Moloney*, 164 A.D.3d 1434 [2d Dept. 2018]). A party seeking to overturn an arbitration award on one or more grounds stated in CPLR 7511(b)(1) bears the burden in establishing a ground for vacatur by clear and convincing evidence [*Tauber* at 1068; *Matter of Denaro v Cruz*, 15 A.D.3d 742 [2d Dept. 2014]].

The award of a master arbitrator in a dispute over a no-fault claim is binding except for the grounds for vacating an award under CPLR 7511 (see Insurance Law 5106[c]; 11 NYCRR 65-4.10[h][1][I]). A master arbitrator has the authority to vacate or modify an arbitration award based upon a ground set forth in CPLR Article 75. A master arbitrator may overturn an award if an arbitrator exceeded his or her power (11 NYCRR § 65-4.10 (a)(1); CPLR 7511 [b] [1] [iii]).

The power of the master arbitrator to review factual and procedural issues is limited to whether the arbitrator acted in a manner that was arbitrary and capricious, irrational or without a plausible basis (see *In re Petrofsky [Allstate Ins. Co.]*, 54 N.Y.2d 207 [1981]). Thus, a master arbitrator exceeds his or her statutory power by making their own factual determination, by reviewing factual and procedural errors committed during the course of the arbitration, by weighing the evidence, or by resolving issues such as the credibility of the witnesses. If the determination of the arbitrator is challenged based upon an alleged factual error, the master arbitrator must uphold the determination if it has a rational basis (*Liberty Mut. Ins. Co. v Spine Americare Medical, P.C.*, 294 A.D.2d 144 [2d Dept. 2002]; *Richardson v Prudential Property & Cas. Ins. Co.*, 230 A.D.2d 861 [2d Dept. 1996]). A master arbitrator's powers of review does not encompass a de novo review of the matter presented to the lower arbitrator and does not authorize the master arbitrator to determine the weight or credibility of the evidence (*Id.*). Additionally, a master arbitrator may not substitute his or her own judgment for that of the arbitrator (see *Matter of Aleman*, 62 N.Y.2d 1017 [1984]). A master arbitrator's grounds for review does include determining whether the decision was incorrect as a matter of law (11 NYCRR 65-4.10[a][4]).

Under the doctrine of collateral estoppel, a party is precluded from 'relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party or those in privity, whether or not the tribunals or causes of action are the same (*Ryan v New York Telephone Co.*, 62 N.Y.2d 494 [1984]; *Vitello v Amboy Bus Co.*, 83 A.D.3d 932 [2d Dept. 2011]; *Arcamone-Makinano v Perlmutter*, 196 A.D.3d 479 [2d Dept. 2021]). The doctrine applies if the issue in the second action is identical to an issue which was raised, necessarily decided and material in the first action, and the plaintiff had a full and fair opportunity to litigate the issue in the earlier action (*Parker v Blauvelt Volunteer Fire Co., Inc.*, 93 N.Y.2d 343 [1999]; *Arcamone-Makinano* at 480). Privity, as a requirement of collateral estoppel, may be found where a nonparty to prior litigation has a relationship with a party to the prior litigation such that his or her own rights or obligations in the subsequent proceeding are conditioned in one way or another on, or derivative of, the rights of the party to the prior litigation [*D'Arata v New York Cent. Mut. Fire Ins. Co.*, 76 N.Y.2d 659 [1990]; *New York State Thruway Authority v Ketco, Inc.*, 195 A.D.3d [2d Dept. 2021]).

Upon review of the moving papers, the Court finds that Arbitrator Peters' decision considered the factual and documentary evidence submitted by the parties and found that

Petitioner did not establish either a case of staged accident and/or that the claimant was not an occupant in the vehicle at the time of the occurrence. Additionally, Arbitrator Peter's held that collateral estoppel applied based on a prior case he presided over involving claims for chiropractic services wherein the Petitioner denied them based upon the same defenses that were being addressed in the undersigned case. On appeal, Master Arbitrator Trestman found that there was no reversible error in Arbitrator Peters' collateral estoppel determination because Petitioner had a full and fair opportunity to litigate its' fraud-based defense in the prior proceeding, that there was no indication that it challenged the prior award nor was there any indication of any new evidence submitted by Petitioner in the within proceeding. Additionally, Master Arbitrator Trestman stated that Petitioner's appellate brief did not even address Arbitrator Peters' collateral estoppel determination. Since Arbitrator's Peters' finding were supported by the facts and the law, Master Arbitrator Trestman's affirmance on this issue was not arbitrary, capricious or incorrect as a matter of law.

Accordingly, it is hereby

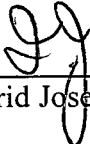
ORDERED that Petitioner's Petition to Vacate Arbitration Award is denied, and it is further

ORDERED that Respondent's Cross-Petition is granted, and it is further

ORDERED Respondent is entitled to No-Fault compensation in the principal amount of \$2,417.40, statutory interest from June 10, 2021 at a rate of 2% per month pursuant to 11 NYCRR 65-3.9(a), statutory attorneys' fees (20% of interest plus principle) pursuant to 11 NYCRR 65-4.6(b), \$130.00 for attorney's fees computed in accordance with 11 NYCRR 65-4.10 (j), mater arbitration filing fees of \$75 pursuant to 11 NYCRR 65-4.5(s)(1), plus costs and disbursements of this action, and it is further

ORDERED, that Respondent is granted leave to serve an affirmation in order to set forth its reasonable attorneys' fees.

This constitutes the decision and order of the Court.

  
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Hon. Ingrid Joseph, J.S.C.

**Hon. Ingrid Joseph  
Supreme Court Justice**