

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

2023 NY Slip Op 33684(U)

September 27, 2023

Supreme Court, Kings County

Docket Number: Index No. 512237/2023

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 27<sup>th</sup> day of September 2023.

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

Index No: 512237/2023

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

-against-

**ORDER**

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

The following papers read herein:  
Notion of Motion/Petition/Exhibits Annexed/Affidavits Annexed  
/Cross-Motion/Exhibits Annexes/Affidavits Annexed

Nos.:  
1-22; 25-26  
23-24;

In this matter Petitioner American Transit Insurance Company (“Petitioner”) filed a Petition on April 25, 2023 wherein it seeks an order and judgment pursuant to CPLR 7511 vacating an arbitration award rendered in favor of Nexray Medical Imaging PC D/B/A Soul Radiology A/A/O Jerson Dominguez (“Respondent”) in the amount of \$ \$3,420.42 for medical services rendered on November 11, 2020 to Jerson Dominguez following a motor vehicle accident. Respondent filed a cross-petition seeking the confirmation of the arbitration award pursuant to CPLR 7510, interest at a rate of 2% from May 28, 2021, until the entry of judgment, no-fault statutory attorneys' fees in the sum of 20% of combined principle and interest up to a maximum of \$1,360.00, in an amount to be calculated by the clerk, no-fault Master Arbitration fees in the sum of \$195.00, an Arbitration filing fee of \$40.00, reasonable attorney’s fees to be determined by the Court in accordance with 11 NYCRR § 65-4.10(j)(4), and costs and disbursements as taxed by the Clerk.

In support of its Petition, Petitioner argues that Arbitrator Teresa Girolamo, Esq.’s (“Arbitrator Girolamo”) award is arbitrary and capricious because it failed to follow well settled law. Petitioner asserts that the claim at issue was properly and timely denied for not being medically necessary as per the peer review of Dr. Ajendra Sohal and the independent medical examination of Dr. Eric Roth. Likewise, Petitioner also claims that Master Arbitrator Robert Trestman, Esq. (“Master Arbitrator Trestman”) exceeded the powers of a master arbitrator by

failing to vacate an arbitration award that was contrary to well settled caselaw. Petitioner now requests that the Court review the underlying record and conclude that there was no evidentiary support for the decision and that the arbitrator failed to follow well settled law when rendering the decision.

In opposition, Respondent argues that Master Arbitrator Trestman acted within the scope of his allotted power in affirming the award and the Petitioner has failed to demonstrate how the Master Arbitrator's assessment of the lower award warrants vacatur pursuant to Article 75 because the Petition fails to address how the award was irrational, contrary to public policy or was made in excess of the arbitrator's power. Respondent states that there is a presumption of medical necessity that attaches to a claim form and that even if there was a legal error, an error of law would not warrant vacatur of the arbitration award because in the compulsory arbitral sense, the evidence must completely lack rationality in order for a Court to step in and vacate awards predicated upon factual determinations.

In support of its cross-motion, 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 that the Court grant 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 are in excess of the usual and customary rate for the no-fault industry. Petitioner states that pursuant to 11 NYCRR § 65-4.6(d), attorneys are entitled to receive a fee of up to \$70 per hour, subject to a maximum fee of \$1,400, and a fee of up to \$80 per hour for each personal appearance before the arbitration forum or court. Furthermore, Petitioner states that Respondent failed to provide an affirmation showing the work completed, the hours it took to complete the work, and the hourly rate for the work done and therefore counsel is only entitled to the hourly rate in 11 NYCRR 65-4.6(c).

11 NYCRR 65-4.10 (h) (1) (i) provides that a decision of a master arbitrator is final and binding except for court review pursuant to an article 75 proceeding. The role of the master arbitrator is to review the determination of the arbitrator to assure that the arbitrator reached his decision in a rational manner and that the decision was not arbitrary and capricious *Petrofsky v Allstate Ins. Co.*, 54 NY2d 207, 212 [1981]. Article 75 of the CPLR allows a court to vacate an

arbitrator's award and by judicial construction a master arbitrator's award on the application of either party *Petrofsky*, 54 NY2d at 210. Upon application to vacate or modify an award by a party the award shall be vacated if the court finds that the rights of the party was 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 (CPLR 7511 [b] [1] [i]-[iv]). When reviewing an arbitrator's award in a compulsory arbitration the master arbitrator like the courts is limited to reviewing whether the arbitrator acted in a manner that was arbitrary and capricious, irrational or without plausible basis (*see Petrofsky*, 54 NY2d at 211 [1981]; *Caso v Coffey*, 41 NY2d 153, 159 [1976]).

Upon review of the moving papers, and following oral argument held August 25, 2023, the Court finds that the Master Arbitrator's decision on February 1, 2023, affirming the Arbitrator's decision dated November 17, 2022, was not arbitrary and capricious and was rational with a plausible basis. In his decision, Master Arbitrator Trestman held that Arbitrator Girolamo's detailed findings and conclusions as to the evidentiary issues were within the Arbitrator's sound discretion. Pursuant to 11 NYCRR 65-4.5[o] [1], the Arbitrator shall be the judge of the relevance and materiality of the evidence offered and the Master Arbitrator's power does not permit a de novo review of the case. Thus, Master Arbitrator Trestman cannot substitute his interpretations or views as to the evidentiary issue over that of the lower arbitrator, especially when the Master Arbitrator finds the Arbitrator's determination to be rational and based on the evidentiary record. Furthermore, Master Arbitrator Trestman addressed the cases relied upon by Petitioner and found them to not be controlling. Therefore, he did not exceed his power and since the award is rational and was based upon the evidence presented by both parties, there are no grounds to vacate or modify it.

Accordingly, it is hereby

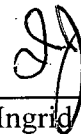
ORDERED, that Petitioner's petition to vacate the arbitration awards is denied, and it is further

ORDERED, that Respondent's cross-motion for an order confirming the award is granted, and it is further

ORDERED, that Respondent is entitled to No-Fault compensation in the principal amount of \$3,420.42, interest at a rate of 2% from May 28, 2021, until the entry of judgment, no-fault statutory attorneys' fees in the sum of 20% of combined principle and interest up to a maximum of \$1,360.00, in an amount to be calculated by the clerk, no-fault Master Arbitration fees in the sum of \$195.00, an Arbitration filing fee of \$40.00, and costs and disbursements as taxed by the Clerk, 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**