

Matter of MTA Bus Co. v College Point Taxi, Inc.

2023 NY Slip Op 34067(U)

November 17, 2023

Supreme Court, New York County

Docket Number: Index No. 451168/2023

Judge: John J. Kelley

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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. JOHN J. KELLEY

PART

56M

Justice

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In the Matter of

MTA BUS COMPANY,

Petitioner,

- v -

COLLEGE POINT TAXI, INC.,

Respondent.

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INDEX NO. 451168/2023MOTION DATE 08/08/2023MOTION SEQ. NO. 001

DECISION, ORDER, and JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6 were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

MTA Bus Company (MTABC) petitions pursuant to CPLR 7510 to confirm an arbitration award dated April 21, 2022, made by an arbitrator acting under the auspices of Arbitration Forums, Inc. (AFI), and pursuant to CPLR 7514 to direct the entry of judgment thereon. The respondent, College Point Taxi, Inc. (College Point), does not oppose the motion. The petition is granted, the award rendered under AFI Docket No. I068-12807-21-00 is confirmed, and MTABC is entitled to enter a money judgment against College Point in the principal sum of \$3,545.87, plus statutory interest from April 21, 2022.

MTABC was the owner and self-insurer of a bus that it operated in the course of providing intracity mass transit services to the public. College Point was the owner and self-insurer of taxicab. On May 19, 2012, both the bus and taxicab were traveling northbound on Madison Avenue in Manhattan. The bus was traveling straight ahead in the right lane and the taxicab was traveling in the lane to the left of the bus. The accident occurred when the driver of the subject taxicab negligently attempted to merge into the right lane, directly in front of the bus, to pick up a potential passenger who was then hailing it. The taxicab then struck the front left

corner of the bus, thus injuring Betty Fagan, who either was the operator of the bus or an MTABC employee who was then traveling on the bus in the course of her employment for MTABC. Fagan, alleging that she was injured, made claim upon MTABC for Workers' Compensation benefits in lieu of first-party no-fault benefits (*see A.I. Transp. v New York State Ins. Fund*, 301 AD2d 380, 380 [1st Dept 2003]; *Arvatz v Empire Mut. Ins. Co.*, 171 AD2d 262, 268 [1st Dept 1991]; Insurance Law §§ 5102 [a], [b]; 5103 [a]; Workers' Compensation Law § 2[3]). As relevant to the medical and healthcare services that are the subject of this proceeding, MTABC paid benefits totaling \$3,545.87 either to Fagan or on her behalf.

Inasmuch as the vehicle that College Point owned and maintained as a self-insured vehicle was a "motor vehicle used principally for the transportation of persons or property for hire" (Insurance Law § 5105[a]), and the bus was "motor vehicle weighing more than six thousand five hundred pounds unloaded" (*id.*), MTABC was entitled to seek a personal injury protection (PIP) or Workers' Compensation "loss transfer" from College Point to reimburse it for the first-party benefits that it had paid out to Fagan or had paid out on her behalf (*see A.I. Transp. v New York State Ins. Fund*, 301 AD2d at 380). To obtain this loss transfer, MTABC was required to establish that the operator of the taxicab was at fault in the happening of the accident. Insurance Law § 5105(b) provides that, where an insurer seeks to recover first-party benefits/PIP or Workers' Compensation loss transfer from the "insurer of any other covered person" on the ground that the other covered person was at fault in the happening of the accident, "[t]he sole remedy . . . shall be the submission of the controversy to mandatory arbitration pursuant to procedures promulgated or approved by the superintendent" of the New York State Department of Financial Services. Pursuant to those regulations, AFI has been designated as the exclusive forum for resolution of no-fault related arbitration matters (*see* 11 NYCRR 65.10). MTABC thus demanded inter-insurer arbitration with College Point before AFI.

In a prior arbitration award issued under AFI docket number I068-13462-16-00, an arbitrator acting under the auspices of AFI found Fagan's description of the accident to be

credible, found in favor of MTABC, concluded that College Point was at 100% at fault in the happening of the subject accident, and made a money award as well. In a later arbitration award dated June 20, 2019, an AFI arbitrator adhered to the findings in the prior award, and further awarded MTABC the additional sum of \$23,668.59 to reimburse MTABC for additional benefits that it had paid to Fagan or on her behalf. In an order dated September 2, 2020, the court (Engoron, J.) denied MTABC's petition to confirm that award on the ground that it had failed properly to serve College Point with the notice of petition and petition, albeit without prejudice to renewal after proper service (*see Matter of MTA Bus Co. v College Point Taxi, Inc.*, Sup Ct, N.Y. County, Index No. 451417/2020, Sep. 2, 2020). Although the petitioner has not submitted any facts concerning the ultimate disposition of the June 20, 2019 award, it thereafter made yet another claim for reimbursement of an additional sum of \$3,545.87 that it had paid out to Fagan or on her behalf. In the April 21, 2022 arbitration award, an arbitrator acting under the auspices of AFI adhered to the findings in the prior awards, found in favor of MTABC, concluded that College Point was at 100% at fault in the happening of the subject accident, and determined that College Point was obligated to pay MTABC the sum of \$3,545.87.

Pursuant to CPLR 7510, the court "shall confirm an [arbitration] award upon application of a party made within one year after its delivery to him [or her] unless the award is vacated or modified upon a ground specified in section 7511." The grounds specified in CPLR 7511 are exclusive (*see Bernstein Family Ltd. Partnership v Sovereign Partners, L.P.*, 66 AD3d 201 [1st Dept 2009]) and it is a "well-established rule that an arbitrator's rulings, unlike a trial court's, are largely unreviewable" (*Matter of Falzone v New York Cent. Mut. Fire Ins. Co.*, 15 NY3d 530, 534 [2013]). The instant proceeding to confirm the arbitration award was timely commenced on April 21, 2023 (*see* CPLR 304[a]). The court notes that College Point was properly served with the notice of petition, petition, and supporting papers (*see* CPLR 311[a][1]; Business Corporation Law § 306). MTABC contends that the award was proper in all respects and that no grounds exist for modification or vacatur. The court agrees, and concludes that MTABC is entitled both

to the confirmation of the award and the entry of a money judgment in the sum of \$3,545.87.

The money judgment must bear interest from the date of the arbitration award, that is, from April 21, 2022 (see CPLR 5002; *Board of Educ. of Cent. School Dist. No. 1 of Towns of Niagara, Wheatfield, Lewiston & Cambria v Niagara-Wheatfield Teachers Assn.*, 46 NY2d 553, 558 [1979]; *Dermigny v Harper*, 127 AD3d 685, 686 [2d Dept 2015]; *Matter of Levin & Glasser, P.C. v Kenmore Prop., LLC*, 70 AD3d 443, 446 [1st Dept 2010]; *Matter of Gruberg v Cortell Group, Inc.*, 143 AD2d 39, 39 [1st Dept 1988]).

Accordingly, it is

ADJUDGED that the petition is granted, without opposition, and the arbitration award rendered in the matter entitled *MTA Bus Company v College Point Taxi, Inc.*, Arbitration Forums, Inc., Docket Number I068-12807-21-00, dated April 21, 2022, be, and hereby is, confirmed; and it is further,

ORDERED that the Clerk of the court shall enter a money judgment in favor of MTA Bus Company and against College Point Taxi, Inc., in the principal sum of \$3,545.87, with statutory interest at 9% per annum from April 21, 2022.

This constitutes the Decision, Order, and Judgment of the court.

11/17/2023

DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

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CASE DISPOSED

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GRANTED

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DENIED

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NON-FINAL DISPOSITION

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GRANTED IN PART

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OTHER

APPLICATION:

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SETTLE ORDER

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SUBMIT ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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FIDUCIARY APPOINTMENT

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REFERENCE