

**Country-Wide Ins. Co. v Advanced Comprehensive
Lab., LLC**

2023 NY Slip Op 34286(U)

December 7, 2023

Supreme Court, New York County

Docket Number: Index No. 653125/2022

Judge: J. Machelles Sweeting

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - PART 62**

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**COUNTRY-WIDE INSURANCE COMPANY,
Petitioner,**

Index No.: 653125/2022

-against-

DECISION & ORDER

**ADVANCED COMPREHENSIVE LABORATORY,
LLC DBA TOPLAB, A/A/O ROSALI GUZMAN,
Respondent.**

MOTION SEQUENCE 001

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HON. J. MACHELLE SWEETING, J.S.C.:

Petitioner moves for an order, pursuant to CPLR 7511(b)(1)(i) and CPLR 7511(b)(1)(iii), vacating an Arbitrator’s Award dated October 13, 2021 and a Master Arbitration award dated May 27, 2022, on the grounds that the arbitrator exceeded his authority such that a final and definite award upon the subject matter submitted was not properly made, and the Master Arbitrator erred in affirming that award. Respondent opposes and cross-moves for an order confirming the award and granting Respondents counsel fees.

This proceeding stems from a motor vehicle accident which occurred on August 1, 2019. One of the drivers involved in the incident was insured by Petitioner. Following the accident, that driver allegedly received medical care from Respondent on December 5, 2019. Respondent submitted medical bills to Petitioner for reimbursement. The matter proceeded to arbitration on November 15, 2021. During these proceedings, Petitioner asserted exhaustion of benefits but did not produce a relevant peer review report on which the denial of benefits was allegedly based, even after an extension was granted to do so. The arbitrator treated the failure to produce the peer review as fatally defective, rejected the exhaustion defense, and determined that Respondent was entitled to the full requested amount in an award dated November 23, 2021. Petitioner then pursued a Master Arbitration award, arguing that the arbitrator’s award was not rationally based upon the

evidence presented and was arbitrary and capricious. The Master Arbitrator affirmed in an award dated May 27, 2022.

Courts have consistently held that the burden for overturning an arbitral judgment is considerable:

“[A]rbitral judgments are owed substantial deference...It is well settled that judicial review of arbitration awards is extremely limited. An arbitration award must be upheld when the arbitrator offers even a barely colorable justification for the outcome reached. Indeed, we have stated time and again that an arbitrator's award should not be vacated for errors of law and fact committed by the arbitrator and the courts should not assume the role of overseers to mold the award to conform to their sense of justice.”

See Wien & Malkin LLP v Helmsely-Spear, Inc., 6 NY3d 471, 475, 480-481 (2006) (internal quotation marks and citations omitted); *see also Azrielant v Azrielant*, 301 AD2d 269, 275 (1st Dept 2002) (“Judicial authority to vacate an arbitration award is limited ... [A]n arbitrator is not bound by principles of substantive law or by rules of evidence but may do justice as he sees it, applying his own sense of law and equity to the facts as he finds them to be and his award will not be vacated unless it is violative of a strong public policy, or is totally irrational, or exceeds a specifically enumerated limitation on his power. A court is bound by an arbitrator's factual findings, interpretation of the contract and judgment concerning remedies, and cannot examine the merits of an arbitration award and substitute its judgment for that of the arbitrator simply because it believes its interpretation would be the better one. Even where an arbitrator makes errors of law or fact, a court may not undertake to conform the award to its sense of justice. An arbitrator's award will be confirmed if any plausible basis exists for the award.” [internal quotation marks and citations omitted]).

However, “[w]here arbitration is compulsory, our decisional law imposes closer judicial scrutiny of the arbitrator's determination under CPLR 7511(b). To be upheld, an award in a compulsory arbitration proceeding must have evidentiary support and cannot be arbitrary and capricious.” *See Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223 (1996); *see also City School Dist. of the City of N.Y. v McGraham*, 17 NY3d 917, 918 (2011). As the arbitration in this matter was compulsory, it is subject to judicial review under an arbitrary and capricious standard and pursuant to CPLR § 7511(b)(1)(iii):

“[An] award shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that party were prejudiced ... [if] 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.”

Petitioner argues that the arbitration award exceeded the arbitrator's power because it granted an award that exceeded the remaining policy. *See Matter of Petrofsky (Allstate Ins. Co.)*, 54 NY2d 207 (1981). Courts have held that arbitrator awards in excess of the remaining policy are in excess of the arbitrator's powers. *See, e.g., Matter of Brijmohan v State Farm Ins. Co.*, 92 NY2d 821, 822-823 (1998). However, the circumstances of this matter fall squarely within an exception to that general rule:

“By denying the claim...defendant implicitly declared that the claim at issue was fully verified. As...fully verified claims are payable in the order they are received, defendant's argument—that it need not pay the claim at issue because defendant paid other claims after it had denied the instant claim, which subsequent payments exhausted the available coverage—lacks merit.”

See Alleviation Med. Servs., P.C. v Allstate Ins. Co., 55 Misc3d 44, 45 (2d Dept 2017) (internal citations omitted); *see also Island Life Chiropractic, P.C. v Commerce Ins. Co.*, 56 Misc3d 129(A), 2017 NY Slip Op 50856(U), *1-*2 (App Term, 2d Dept 2017) (“defendant failed to establish, as a matter of law, an exhaustion of the coverage limits of the insurance policy at issue, as defendant did not demonstrate that the policy had been exhausted *at the time the claim at issue was complete.*” [emphasis added]).

As both the Arbitrator's Award and the Master Arbitrator's Award note, the carrier's denial in this proceeding was issued on January 15, 2020 but exhaustion of the policy did not occur until August 13, 2021. As such, the denial of the exhaustion defense fell squarely within an established exception and that denial was not arbitrary and capricious and comported with the requirements set forth in CPLR § 7511(b). Petitioner also challenges the Master Arbitrator's Award for conducting a *de novo* review of the arbitrator's determination, but the court sees no reason to disrupt the Master Arbitrator's affirmation of the Arbitrator's award – and notes that it was based upon the same reasoning as the court adopts here.¹ Petitioner's requests for relief are accordingly denied.

Respondent has also moved for monetary relief in the form of principle in the amount of \$2,711.83; statutory interest from February 27, 2020 at the rate of 2 percent a month pursuant to 11 NYCRR 65-3.9(a); statutory attorney fees at the rate of 20 percent of the total amount of first-party benefits plus interest thereon, subject to a maximum fee of \$1,360.00, in accordance with 11 NYCRR 65-4.6(b); the arbitration filing fee of \$40 pursuant to 11 NYCRR 65-4.5(s)(1); additional attorney's fees awarded by the Master Arbitrator in the amount of \$650 in accordance with 11 NYCRR 65-4.10(j)(2)(i); and an award of quantum meruit attorney's fees for the fair and reasonable value of the legal services rendered by Respondent's counsel in connection with the instant petition, in an amount to be determined and fixed by the Court pursuant to 11 NYCRR 65-4.10(j)(4). These requests for relief are granted except that the court declines to award additional fees pursuant to 11 NYCRR 65-4.10(j)(4).

¹ For example, the Master Arbitrator's Award explicitly states that "[t]he Award rests upon a reasonable hypothesis that culls an exception to the general rule which circumscribes a carrier's exposure by its coverage limits where, as here, the insurer fails to document the exhaustion of coverage prior to the ripening of a fully verified claim."

Any requests for relief not addressed herein are denied.

This constitutes the decision and order of the court.

12/7/2023

DATE

J. MACHELIE SWEETING, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED DENIED

GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE