

**Oasis Med. & Surgical Wellness v
New Jersey Mfrs. Ins. Co.**

2023 NY Slip Op 34526(U)

December 21, 2023

Supreme Court, New York County

Docket Number: Index No. 651285/2023

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH **PART** **14**

Justice

-----X

OASIS MEDICAL AND SURGICAL WELLNESS, A/A/O
FRAN ZUNIGA

Petitioner,

- v -

NEW JERSEY MANUFACTURERS INSURANCE CO.,

Respondent.

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INDEX NO. 651285/2023

MOTION DATE 12/13/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- , 9, 10, 11 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

The petition to vacate an arbitration award is granted as described below.

Background

Petitioner is a medical provider that purportedly rendered medical services to an injured person in New Jersey arising out of a car accident that took place in New York. It observes that the injured person was not the policy holder under the subject policy issued by respondent. Petitioner contends that it sent bills amounting to \$103,279.02 and respondent denied the request on medical necessity grounds.

Petitioner then pursued an arbitration. It explains that the first arbitration was dismissed on the ground that jurisdiction did not exist over respondent, that New Jersey law would apply and that the lower arbitrator did not want to learn New Jersey no-fault law. Petitioner then filed a demand for a master arbitrator’s review. The master arbitrator remanded the hearing to the lower arbitrator and instructed that there be a ruling about which state’s law applied.

After the next arbitration, the arbitrator ruled that New Jersey law applies and that, under the doctrine of forum non conveniens, the arbitration should go forward before a New Jersey arbitration vendor. The master arbitrator then affirmed this ruling, stating that:

“Here Appellant readily concedes that New Jersey substantive law should apply. There is a reputable forum that exists in New Jersey that is far better equipped to decide the issues in dispute herein. Appellant is asking that the NFA (licensed in New York and whose expertise is clearly in New York No-Fault law) interpret and apply the concepts that govern New Jersey No-Fault which places an unduly burden upon the NFA with no demonstrable benefit to the Applicant. I cannot conclude that the NFA abused his discretion in dismissing Applicant’s case without prejudice on forum non conveniens grounds” (NYSCEF Doc. No. 3 at 4).

Petitioner now brings this proceeding to vacate that decision. It argues that the award’s ruling that petitioner was not permitted to prosecute this dispute before the American Arbitration Association is erroneous as a matter of law. It insists that many New York cases have applied New Jersey no fault laws in cases pending in New York. Petitioner maintains that it chose, in the first instance, to pursue dispute resolution before AAA in New York.

It insists that the arbitration forum did not have the power to *sua sponte* dismiss the arbitration and points out that respondent made substantive arguments rather than object to venue. Petitioner claims that respondent therefore waived its right to object to the New York location for the arbitration.

Respondent did not offer a substantive response. It merely offered an answer in which it asked the Court to deny the petition and offered a general denial to petitioner’s allegations.

Discussion

“CPLR 7511 provides just four grounds for vacating an arbitration award, including that the arbitrator exceeded his power (CPLR 7511[b][1][iii]), which “occurs only where the arbitrator's award violates a strong public policy, is irrational or clearly exceeds a specifically

enumerated limitation on the arbitrator's power. Mere errors of fact or law are insufficient to vacate an arbitral award. Courts are obligated to give deference to the decision of the arbitrator, even if the arbitrator misapplied the substantive law in the area of the contract (*NRT New York LLC v Spell*, 166 AD3d 438, 438-39, 88 NYS3d 34 [1st Dept 2018] [internal quotations and citations omitted]).

The Court grants the petition. Petitioner established that the accident in question occurred in New York and therefore there is a sufficient nexus to New York. Moreover, respondent did not substantively object to the assertion in this proceeding that it waived its right to complain about venue. Therefore, the lower and master arbitration awards that are the basis of this proceeding are vacated and petitioner may pursue another arbitration.

For some reason that is not apparent to this Court, petitioner seems intent on pursuing this arbitration (which will involve New Jersey no-fault law, a New Jersey medical provider and an injured New Jersey resident who got treatment in New Jersey) in an arbitral forum based in New York despite the fact that multiple New York arbitrators have expressed that New Jersey would be a better forum for such a determination.


The arbitrators reasonably observed that it would be better to pursue such a claim with experts in New Jersey no-fault law; just as you wouldn't insist your dentist perform heart surgery, it makes no sense to insist that an expert on highly technical field of New York law apply New Jersey's laws, especially when that expert is telling you he is unfamiliar with New Jersey law. Worse still, if that NY arbitrator gets NJ law wrong, it may be difficult to overturn the award.

However, petitioner is correct that the arbitrator was not permitted to *sua sponte* decide to dismiss the arbitration and respondent’s two-page answer does not substantively contest this assertion or any of petitioner’s assertions.

Although petitioner asks for this dispute to be remanded to a different arbitrator, it did not suggest one and the Court declines to pick one *sua sponte*. Moreover, is it not clear whether petitioner meant a different arbitral forum or a different individual arbitrator and the Court cannot make that assumption. Petitioner is directed to go back to the forum it insisted upon using and make any arguments about a different arbitrator there.

Accordingly, it is hereby

ADJUDGED that the petition is granted only to the extent that petitioner is entitled to a new arbitration and the petition is denied to the extent petitioner seeks arbitration filing fees or costs and disbursements from this proceeding.

<u>12/21/2023</u> DATE					 ARLENE P. BLUTH, J.S.C.					
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN								