

**Matter of Motor Veh. Acc. Indem. Corp. v Drivo Rent
A Car, LLC**

2024 NY Slip Op 31803(U)

May 23, 2024

Supreme Court, New York County

Docket Number: INdex No. 452345/2023

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

MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION, as subrogee of DANTE BRECKENRIDGE

Petitioner,

- v -

DRIVO RENT A CAR, LLC, also known as DRIVO, LLC,

Respondent.

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INDEX NO. 452345/2023

MOTION DATE 09/18/2023

MOTION 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, 7, 8, 9

were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

The Motor Vehicle Accident and Indemnification Corporation (MVAIC), as subrogee of Dante Breckinridge, petitions pursuant to CPLR 7510 to confirm an arbitration award dated August 17, 2023 that had been rendered 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, Drivo Rent A Car, also known as Drivo, LLC (Drivo), does not oppose the petition. The petition is granted, the award rendered under AFI Docket No. I2301E954BA-C1-D2 is confirmed, and MVAIC is entitled to enter a money judgment against Drivo in the principal sum of \$50,000.00, plus statutory interest from August 17, 2023.

On June 15, 2021, pedestrian Dante Breckinridge was struck in Brooklyn, New York, by a 2018 Hyundai vehicle owned by Drivo, bearing New Jersey license plate number F75KUL. The relevant automobile rental agreement established that Drivo had rented the subject vehicle to Torsha Cupid on June 12, 2021, and that Cupid picked up the vehicle at John F. Kennedy International Airport in Ozone Park, New York. Drivo had not secured no-fault coverage with respect to that vehicle, even though it did business in New York. After Breckinridge made a

claim against Drivo, and learned that Drivo's vehicle was uninsured, he made a claim upon MVAIC for first-party personal injury protection benefits, commonly known as "no-fault" benefits. MVAIC paid the sum of \$50,000 to Breckinridge, or for his benefit, to reimburse him for medical expenses and other basic economic loss that he sustained as a result of his injuries. Although Cupid had her own household policy of motor vehicle insurance with Security National Insurance Company (Security), Security asserted that either Drivo or Drivo's insurance carrier, if any, was the primary entity responsible for paying no-fault benefits to Breckinridge.

Both Security and Drivo were named as respondents in the arbitration proceeding, but neither appeared at the arbitration hearing. In the award dated August 17, 2023, the arbitrator concluded that Drivo did business in New York, that Breckinridge's loss occurred in New York, and that, as such, Insurance Law § 5107 obligated Drivo to provide coverage sufficient to satisfy the financial security requirements of Vehicle and Traffic Law articles six or eight, and to provide for the payment of first-party, no-fault benefits pursuant to Insurance Law § 5103. The arbitrator thus awarded MVAIC the principal sum of \$50,000 against Drivo and \$0 against Security.

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 award may only be vacated if the court finds that the rights of a 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"

(CPLR 7511[b][1]). The grounds specified in CPLR 7511 for vacatur of an arbitration award are exclusive (*see Bernstein Family Ltd. Partnership v Sovereign Partners, L.P.*, 66 AD3d 1, 8 [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]). Where, as here, arbitration is compulsory (see Insurance Law § 5105), closer judicial scrutiny of the arbitrator's determination is required under CPLR 7511(b)(1)(iii) than that applicable to consensual arbitrations (see *Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223 [1996]; *Matter of Furstenberg [Aetna Cas. & Sur. Co.–Allstate Ins. Co.]*, 49 NY2d 757, 758 [1980]; *Mount St. Mary's Hosp. v Catherwood*, 26 NY2d 493, 508-509 [1970]). Thus, 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 at 223; *Matter of Furstenberg [Aetna Cas. & Sur. Co.–Allstate Ins. Co.]*, 49 NY2d at 758).

There are two types of no-fault disputes between insurers that are subject to mandatory arbitration---loss transfer and priority of payment (see Insurance Law § 5105; 11 NYCRR 65-3.12; 11 NYCRR 65-4.11). The arbitration procedures established pursuant to Insurance Law § 5105 thus apply to disputes over priority of payment among insurers who are liable for the payment of first-party benefits (see Insurance Law § 5105[a], [b]; 11 NYCRR 65-3.12 [b]). The refusal of the owner or insurer of a rental vehicle to pay the claims of an injured claimant when first presented raises a question as to the priority of payments between the rental vehicle's owner or insurer, the driver's own insurer, or other insurers of last resort, such as MVAIC, and any dispute arising from those circumstances must be submitted to mandatory arbitration under Insurance Law § 5105 and 11 NYCRR § 65.10(a)(5) (see *Matter of Pacific Ins. Co. v State Farm Mut. Auto. Ins. Co.*, 150 AD2d 455 [2d Dept 1989]), since “[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 (Insurance Law § 5105[b]). 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).

One of the issues before the arbitrator here was the threshold issue of whether Drivo was an “insurer” subject to the mandatory arbitration procedures of Insurance Law § 5105 and

11 NYCRR 65-3.12(b) (see *Matter of Fiduciary Ins. Co. v American Bankers Ins. Co. of Fla.*, 132 AD3d 40, 45 [2d Dept 2015]; *Hunter v OOIDA Risk Retention Group, Inc.*, 79 AD3d 1, 9 [2d Dept 2010]). The fact that Drivo elected not to participate in the arbitration did not divest the arbitrator of the authority to determine, in the first instance, whether Drivo was an “insurer” within the meaning of the subject statute and regulation (see *Matter of Fiduciary Ins. Co. v American Bankers Ins. Co. of Fla.*, 132 AD3d at 45). This is because an arbitrator may hear and determine a controversy upon the evidence produced, notwithstanding the failure of a party to appear (see CPLR 7506[c]; *Matter of Fiduciary Ins. Co. v American Bankers Ins. Co. of Fla.*, 132 AD3d at 45; *Matter of Whale Sec. Co. [Godfrey]*, 271 AD2d 226, 227 [1st Dept 2000]).

The instant proceeding to confirm the arbitration award was timely commenced on September 18, 2023 (see CPLR 304[a]). The court notes that, on October 16, 2023, Drivo was properly served with the notice of petition, petition, and supporting papers (see CPLR 311-a; Limited Liability Company Law § 303[a]), but did not answer or appear in this proceeding. MVAIC contends that the award was proper in all respects and that no grounds exist for modification or vacatur. By failing to answer or appear in this proceeding, Drivo has waived any contention that the award was improper. The court agrees with MVAIC’s contentions, and concludes that MVAIC is entitled both to the confirmation of the award and the entry of a money judgment in the sum of \$50,000. The money judgment must bear interest from the date of the arbitration award, that is, from August 17, 2023 (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 *Motor Vehicle Accident Indemnification Corporation, as subrogee*

of Dante Breckinridge v Security Natl. Ins. Co. and Drivo Rent A Car, LLC, also known as Drivo, LLC, Arbitration Forums, Inc., Docket Number I2301E954BA-C1-D2, dated August 17, 2023, be, and hereby is, confirmed; and it is further,

ORDERED that the Clerk of the court shall enter a money judgment in favor of Motor Vehicle Accident Indemnification Corporation, as subrogee of Dante Breckinridge, and against Drivo Rent A Car, LLC, also known as Drivo, LLC, in the principal sum of \$50,000.00, with statutory interest at 9% per annum from August 17, 2023.

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

5/23/2024
DATE



JOHN J. KELLEY, 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