

**Country-Wide Ins. Co. v Advantage Med Innovations,
Inc.**

2024 NY Slip Op 32508(U)

July 15, 2024

Supreme Court, New York County

Docket Number: Index No. 652291/2020

Judge: Debra A. James

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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**

<p>PRESENT: <u>HON. DEBRA A. JAMES</u></p> <p align="center"><i>Justice</i></p> <p>-----X</p> <p>COUNTRY-WIDE INSURANCE COMPANY</p> <p align="center">Petitioner,</p> <p align="center">- v -</p> <p>ADVANTAGE MED INNOVATIONS, INC.,</p> <p align="center">Respondent.</p> <p>-----X</p>	<p>PART 59</p> <p>INDEX NO. <u>652291/2020</u></p> <p>MOTION DATE <u>06/05/2020</u></p> <p>MOTION SEQ. NO. <u>001</u></p> <p align="center">DECISION + ORDER ON MOTION</p>
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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

ORDER

Upon the foregoing documents, it is

ADJUDGED that the petition to vacate the lower Arbitrator's Award dated February 4, 2020 and the Master Arbitration Award dated March 27, 2020 in favor of respondent Advantage Med Innovations, Inc. and against petitioner Country-Wide Insurance Company dated February 20, 2020 is denied; and it is further

ADJUDGED that the cross-petition to confirm such arbitration awards and for legal fees incurred in prosecuting the arbitral appeal is granted; and it is further

ADJUDGED that the respondent Advantage Med Innovations, Inc. do recover from the petitioner Country-Wide Insurance Company NY the amount of \$2,412.90, plus interest at the statutory rate from the date of March 27, 2020, as computed by the Clerk in the amount

of \$ _____ , plus attorneys' fees in the amount of \$2,025.00, together with costs and disbursements in the amount of \$ _____ as taxed by the Clerk, for the total amount of \$ _____ , and that the respondent have execution therefor.

DECISION

In this action to vacate an arbitration award, dated February 4, 2020 (the "lower arbitrator award") and the subsequent No-Fault Master Arbitration Award, dated March 27, 2020, (the "master arbitrator award"), which was affirmed the lower arbitrator award.

The lower arbitrator award found

"Upon consideration of the arguments of counsel and after a thorough review of all submissions. . . that [the petitioner Country-Wide Insurance Company ("CWI")] has not submitted sufficient evidence to meet its burden of demonstrating that the services at issue were not medically necessary or to justify its denial of reimbursement for these services".

On that basis, the lower arbitrator awarded the respondent Advantage Med Innovations, Inc. ("AMI") \$2,412.90 for medical services arising out of an automobile accident that occurred on January 2, 2018. (NYSCEF Document Number 3, p 4). By master arbitration award dated March 4, 2020, the master arbitrator stated, in pertinent part:

"The lower arbitrator carefully considered all of the medical evidence. It was his determination, after that consideration that the medical services were medically [necessary]. {The lower arbitrator's} conclusions and findings regarding medical necessity were in his discretion and interpretation of the evidence. It cannot be regarded as reversible error

within this Master Arbitrator's purview. This Master Arbitrator cannot conduct a de novo review and substitute my interpretation and view of the evidence for that of the lower arbitrator."

CWI commenced this special proceeding pursuant to CPLR 7511 seeking to vacate the lower arbitrator and master arbitrator awards on the basis that: (1) the master arbitrator's award was so imperfectly executed that a final and definite award upon the subject matter submitted was not made, (2) that the master arbitrator erred in affirming the lower arbitrator award; and/or (3) the matter be remanded for a new hearing solely on the issue of policy exhaustion. AMI filed a cross-petition seeking confirmation of the master arbitrator award and for attorney's fees pursuant to 11 NYCRR § 65-4.10(j)(4).

"It is well settled that a court may vacate an arbitration award only if it violates public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power. Even where an arbitrator has made an error of law or fact, courts generally may not disturb the arbitrator's decision"

In re Falzone (New York Cent. Mut. Fire Ins. Co.), 15 NY3d 530, 534 (2010) (citations omitted).

In seeking to vacate the Master Award, CWI argues that AMI failed to rebut the showing of medical necessity, and the lower arbitrator award exceeded the limits of the Policy. Such arguments are insufficient grounds for overturning the master arbitrator award. CWI did not establish that the master arbitrator award was in excess of the policy limits, arguing only for the first time

before the master arbitrator that the policy was "near" exhaustion, which is no basis for vacatur. See Lam Quan, MD, PC v GEICO General Insurance Company, 223 AD3d 503 (1st Dept 2024).

CWI's petition merely rehashes arguments made during the lower and master arbitrations, which were considered and rejected by the arbitrators. Such contentions fall short of the extremely narrow circumstances that would permit this court to overturn a master arbitration award. See Allstate Insurance Co v Westchester Medical Group, MD, 125 AD3d 649 (2nd Dept 2015).

Finally, "[i]n a proceeding for judicial review of an award by a master arbitrator, an attorney's fee shall be fixed by the court adjudicating the matter" Unitrin Advantage Ins. Co. Kemper A. Unitrin Bus. v Professional Health Radiology, 143 AD3d 536, 537 (1st Dept 2016). Therefore, the court will award attorneys' fees to AMI in the amount of \$1,785, which AMI sufficiently establishes by counsel's affirmation and supporting documentation with respect to the appeal (NYSCEF Document Numbers 18 and 19), in addition to statutory attorneys' fees.

Debra A. James
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<u>7/15/2024</u>			
DATE		DEBRA A. JAMES, J.S.C.	
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE