

Matter of American Tr. Ins. Co. v Repwest Ins. Co.

2024 NY Slip Op 32636(U)

June 28, 2024

Supreme Court, New York County

Docket Number: Index No. 654910/2023

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
AMERICAN TRANSIT INSURANCE COMPANY,

Petitioner,

INDEX NO. 654910/2023

MOTION DATE 07/12/2024

MOTION SEQ. NO. 001

- v -

REPWEST INSURANCE COMPANY,

Respondent.

**DECISION, ORDER, AND
JUDGMENT**

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

American Transit Insurance Company (ATIC) petitions pursuant to CPLR 7510 to confirm an arbitration award dated October 12, 2022, made by an arbitrator acting under the auspices of Arbitration Forums, Inc. (AFI), and pursuant to CPLR 7514 to direct the entry of a money judgment thereon. The respondent, Repwest Insurance Company (Repwest), does not oppose the petition. The petition is granted, the award rendered under AFI Docket No. I068-07513-22-00 is confirmed, and ATIC is entitled to enter a money judgment against Repwest in the principal sum of \$2,257.81, plus statutory interest from October 12, 2022.

ATIC is the insurer of a motor vehicle for hire owned by Serigne Niang and operated by Thiam Cheikh. Repwest is the insurer of a truck owned by U Haul Co. of Arizona and operated by Gina Dufort. On June 7, 2017, Cheikh was travelling eastbound in his vehicle on West 125th Street in Manhattan. As he approached that street's intersection with Fifth Avenue, Dufort, who was travelling westbound in her vehicle on West 125th Street, made an improper left turn in front of Cheikh's vehicle, causing the two vehicles to collide.

Cheikh made claim for the injuries that he sustained in the accident upon ATIC, as the insurer of the vehicle that he was operating. ATIC paid claims totaling \$2,257.81 either to Cheikh or on his behalf.

Inasmuch as Dufort's vehicle was a "motor vehicle weighing more than six thousand five hundred pounds unloaded" (Insurance Law § 5105[a]) or, alternatively, because Cheikh's vehicle was "a motor vehicle used principally for the transportation of persons or property for hire" (*id.*), ATIC was entitled to seek a personal injury protection (PIP) "loss transfer" from Repwest to reimburse it for the benefits that it had paid out to and on behalf of Cheikh. To obtain this loss transfer, ATIC was required to establish that Dufort, as the operator of the vehicle insured by Repwest, 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 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, loss-transfer arbitration matters (see 11 NYCRR 65.10). ATIC thus demanded inter-insurer arbitration with Repwest before AFI.

In the October 12, 2022 arbitration award, an arbitrator acting under the auspices of AFI found Cheikh's description of the accident to be credible, found in favor of ATIC, and concluded that Dufort was at 100% at fault in the happening of the subject accident because she was negligent in making an improper left turn in front of Cheikh's vehicle, thus causing the collision. She thus determined that Repwest was obligated to pay ATIC the sum of \$2,257.81.

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 October 5, 2023 (see CPLR 304[a]). ATIC contends that the award was proper in all respects and that no grounds exist for modification or vacatur. The court agrees, and concludes that ATIC is entitled both to the confirmation of the award and the entry of a money judgment in the sum of \$2,257.81. The money judgment must bear interest from the date of the arbitration award, that is, from October 12, 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 *American Transit Ins. Co. v Repwest Ins. Co.*, Arbitration Forums, Inc., Docket Number I068-07513-22-00, dated October 12, 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 American Transit Insurance Company and against Repwest Insurance Company in the principal sum of \$2,257.81, with statutory interest at 9% per annum from October 12, 2022

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

6/28/2024
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: