

New Jersey Mfrs. Ins. Co. v Arbitration Forums, Inc.

2024 NY Slip Op 32774(U)

August 5, 2024

Supreme Court, New York County

Docket Number: Index No. 651742/2023

Judge: Shahabuddeen Abid Ally

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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. SHAHABUDDEN ABID ALLY

PART 16TR

Justice

NEW JERSEY MANUFACTURERS INSURANCE
COMPANY A/S/O TRACI LYNN VITIELLO,

Petitioner,

-against-

ARBITRATION FORUMS, INC., LIBERTY MUTUAL
INSURANCE COMPANY, GOVERNMENT EMPLOYEES
INSURANCE CO., and TRAVELERS INSURANCE
COMPANY,

Respondents.

INDEX NO. 651742/2023

MOTION DATE 2/27/2024

MOTION SEQ. NO. 001

DECISION & ORDER

The following e-filed documents, listed by NYSCEF document number, were read on this motion (Seq. No. 1) to/for **ARTICLE 75 (VACATE AWARD)**: 1-8, 11-18, 21, 24-25, 29, 32-33

In this proceeding, petitioner NEW JERSEY MANUFACTURERS INSURANCE COMPANY A/S/O TRACI LYNN VITIELLO ("Petitioner" or "NJM") seeks to vacate, pursuant to CPLR § 7511, an arbitration award issued by respondent ARBITRATION FORUMS, INC. ("AFI") on February 1, 2023. Petitioner initiated this proceeding by Petition and Notice of Petition filed on April 6, 2023. The Petition named only AFI as respondent.¹ Subsequently, on August 24, 2023, Petitioner filed an Amended Petition and Amended Notice of Petition naming LIBERTY MUTUAL INSURANCE COMPANY ("Liberty Mutual"), GOVERNMENT EMPLOYEES INSURANCE CO. ("Geico"), and TRAVELERS INSURANCE COMPANY ("Travelers")² as additional respondents.³ Geico and Liberty Mutual filed opposition on October 18, 2023, and January 1, 2024,

¹ The proceeding was subsequently discontinued as to AFI by stipulation dated and filed on September 6, 2023. (Dkt. No. 21)

² The proceeding was subsequently discontinued as to Travelers by stipulation dated October 10, 2023, and filed on October 16, 2023. (Dkt. No. 24)

³ Petitioner filed the Amended Petition to NYSCEF under the improper label of "Affidavit or Affirmation In Support" rather than the proper label of "Petition (Amended)." As a result, the Court's internal systems were not updated to reflect Liberty Mutual, Geico, and Travelers as respondents in this proceeding. None of those respondents has raised this irregularity, however, as grounds for denying Petitioner's requested relief. Indeed, all who have opposed the Amended Petition appear to accept that it was properly filed (subject to the timeliness and substantive arguments

respectively. Petitioner filed replies to the opposition. For the reasons discussed below, the Amended Petition and Amended Notice of Petition are **DENIED**.

The underlying arbitration award was issued in an arbitration proceeding involving a seven-vehicle, chain-reaction automobile accident that occurred on the Henry Hudson Parkway, southbound near West 110th Street in Manhattan, on May 18, 2021 (the "Accident"). Petitioner is the insurer and subrogee of Traci Lynn Vitiello, who drove the fourth vehicle in the chain. Travelers insured the second vehicle, driven by Damaso Rivas. Geico insured the third and seventh vehicles, driven by Idris Fernandez and Aris Douglas, respectively. Liberty Mutual insured the fifth vehicle, driven by Guaca Perez. The first vehicle, driven by Rocelio Joaquin, and the sixth vehicle, driven by Sotirios Bisblkis, were insured, respectively, by American Transit Insurance Company ("ATIC") and Hereford Insurance Company ("Hereford"), both nonparties to this proceeding.

Liberty Mutual initiated the underlying arbitration proceeding before AFI on behalf of its insured, Perez, on September 17, 2022. ATIC was a nonsignatory to the applicable arbitration agreement and so was not a party to the proceeding. Hereford's participation was apparently "deferred" due to pending court litigation. The arbitration, therefore, was between NJM, Liberty Mutual, Geico, and Travelers.

AFI issued its decision and award in the arbitration on February 1, 2023. The arbitrator concluded, in relevant part:

This is a case of disputed liability. [Travelers] alleged an unnamed party (Joaquin) abruptly changed lanes causing [Travelers] to brake and subsequently be struck from behind by another unnamed party (Fernandez) and pushed into the lead vehicle (Joaquin). [NJM] alleged they were stopped, when they were struck from behind by [Liberty Mutual]. After the initial impact, NJM alleged they were pushed into the vehicle in front of them. [Liberty Mutual] alleged they were stopped, when GEICO rear-ended an unnamed party (Heneford [*sic*]) and pushed the unnamed party into their vehicle. After the initial impact, [Liberty Mutual] indicated they were pushed into NJM. GEICO alleged they were the last car [in] a seven

raised herein). Therefore, and because no additional filing fee is necessary, the Court exercises its discretion under CPLR § 2001 to disregard the error.

(7) car loss and maintained they rear-ended an unnamed party (Bisblkis).

Reviewed the evidence submitted by NJM, [Liberty Mutual], [Travelers] and GEICO.

....

The damage to vehicles could support either party's contention and is not sufficient to support which party/parties were stopped prior to the loss.

In all, this is a case of conflicting statements. In regard to the damage to [Travelers], Joaquin maintained they were rear-ended by [Travelers]. [Travelers] maintained Joaquin abruptly changed lanes. The evidence is sufficient to support Fernandez rear-ended [Travelers] and would be responsible for [Travelers'] rear damages. Concerning the damage to NJM and [Liberty Mutual], [Liberty Mutual] maintained they were stopped prior to the impact. The evidence is sufficient to support Bisb[I]kis rear-ended [Liberty Mutual] and pushed them into NJM. Lastly, the evidence is more consistent to support GEICO was responsible for the rear damage to Bisb[I]kis.

(Dkt. No. 16 at 4) To restate the arbitrator's findings, as relevant to this proceeding, the evidence supported the conclusion that the sixth vehicle (driven by Bisblkis and insured by Hereford) struck the rear of the fifth vehicle (driven by Perez and insured by Liberty Mutual), which was pushed by the force of that impact into the rear of the fourth vehicle (driven by Vitiello and insured by Petitioner), and that the seventh vehicle (driven by Douglas and insured by Geico) caused damage to the rear of the sixth vehicle (again, driven by Bisblkis and insured by Hereford). AFI further found that the seventh vehicle had breached a duty by "[f]ollowing too close" but that no party had proven entitlement to damages. The award, therefore, provided for no damages award to any party.

Petitioner contends that AFI's failure to award it damages is cause to vacate the award pursuant to CPLR § 7511(b)(1)(iii), because the arbitrator failed to apply well-settled New York law concerning liability in rear-end collisions. Specifically, it appears that Petitioner faults the arbitrator for not assigning liability to, and thus awarding damages against, Liberty Mutual, even though the arbitrator found that the fifth vehicle (driven by Perez and insured by Liberty Mutual) struck Petitioner's insured's vehicle in the rear.

Geico and Liberty Mutual oppose the Amended Petition on identical grounds. *First*, they contend that the Amended Petition is untimely as to them because it was filed beyond the applicable 90-day deadline for filing an application to vacate an arbitration award set forth in CPLR § 7511(a). *Second*, they contend that the award attached to the Amended Petition is neither signed nor affirmed by the arbitrator, as required by CPLR § 7507, essentially rendering it incapable of supporting Petitioner's application. *Third*, they contend that the award is sufficiently explained and supported in evidence and law to survive the limited scope of review that a court may undertake upon a § 7511 application.

In reply, Petitioner argues that the Amended Petition relates back to the original Petition and is therefore timely as to Geico and Liberty Mutual. Petitioner also essentially repeats his arguments made in the Amended Petition.

Initially, Petitioner does not cite to any caselaw in support of its argument that the Amended Petition relates back to the original Petition, and, similarly, Respondent does not cite to any caselaw demonstrating that CPLR § 7507 should be interpreted in such a way that the arbitration award issued by AFI is essentially nonfinal and invalid for purposes of a § 7511 application. Neither issue need be addressed to resolve Petitioner's application, however, because it fails on substantive grounds.

"It is well settled that a court may vacate an arbitration award only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power." *In re Falzone [New York Cent Mut Fire Ins Co]*, 15 N.Y.3d 530, 534 (2010). Such enumerated limitations are set forth in CPLR § 7511, which provides that an arbitration award may be vacated upon a finding that the rights of a party were prejudiced by (1) corruption, fraud, or misconduct in procuring the award; (2) the partiality of an arbitrator; (3) the arbitrator having exceeded their power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or (4) failure to follow the procedures set forth in Article 75 of the CPLR. CPLR § 7511(b)(1)(i)-(iv). A party seeking to vacate an arbitration award bears a "heavy burden of establishing by clear and convincing evidence the existence of any ground for vacating [an] arbitration award under CPLR 7511." *Greenky v. Aytes*, 138 A.D.3d 460, 460 (1st Dep't 2016) (internal quotation marks and citation omitted). "Even where an arbitrator has made an error of

law or fact, courts generally may not disturb the arbitrator's decision." *In re Falzone*, 15 N.Y.3d at 534 (citation omitted).

Here, contrary to Petitioner's contentions, the arbitrator did not exceed its power by failing to award Petitioner damages. Petitioner's argument relies on the arbitrator having manifestly disregarded the law concerning liability for rear-end collisions, but the arbitrator's decision not to assign liability to any of the vehicles in the chain behind Petitioner's insured's vehicle is consistent with the arbitrator's written findings of fact and with the law concerning chain-reaction collisions. The arbitrator specifically found that the evidence supported that the sixth vehicle (driven by Bisblkis and insured by Hereford) struck the rear of the fifth vehicle (driven by Perez and insured by Liberty Mutual), *which was pushed by the force of that impact* into the rear of the fourth vehicle (driven by Vitiello and insured by Petitioner). Thus, the law generally assigns no liability to the fifth vehicle for damages to Petitioner's insured's vehicle. *See Chuk Hwa Shin v. Correale*, 142 A.D.3d 518, 519 (2d Dep't 2016) ("In a chain collision accident, the operator of the middle vehicle may establish *prima facie* entitlement to judgment as a matter of law by demonstrating that the middle vehicle was properly stopped behind the lead vehicle when it was struck from behind by the rear vehicle and propelled into the lead vehicle."); *Mustafaj v. Driscoll*, 5 A.D.3d 138 (1st Dep't 2004). Additionally, the arbitrator could not award damages against the sixth vehicle because neither the driver nor the insurance company, Hereford, were active parties to the arbitration, as reflected in the award itself.

Moreover, the arbitrator did not find that the seventh vehicle pushed the sixth vehicle into the fifth vehicle, which then pushed the fifth vehicle into Petitioner's insured's vehicle; rather, the arbitrator found only that "the evidence is more consistent to support GEICO [*i.e.*, the seventh vehicle] was responsible for the rear damage" to the sixth vehicle. Thus, because there is no finding by the arbitrator, based on its review of the evidence submitted by the parties, that the seventh vehicle caused the chain reaction of collisions that led to the fifth vehicle being pushed into Petitioner's insured's vehicle, it is not inconsistent with the arbitrator's findings of fact or contrary to controlling law for the arbitrator not to have assigned liability to the seventh vehicle for the damage to Petitioner's insured's vehicle. Under the arbitrator's determination of the facts, the seventh vehicle would only be liable to the sixth vehicle for damages, but, again, Hereford was not an active party to the proceeding.

Accordingly, Petitioner's application to vacate the February 1, 2023 award must be denied.

Where an application to vacate or modify an arbitration award is denied, CPLR § 7511(e) mandates that the reviewing court confirm the award. *Blumenkopf v. Proskauer Rose LLP*, 95 A.D.3d 647, 648 (1st Dep't 2012). The February 1, 2023 award is, therefore, confirmed.

Accordingly, it is hereby:

ORDERED and ADJUDGED that the Amended Petition and Amended Notice of Petition (Seq. No. 1) are **DENIED**, and the proceeding is **DISMISSED**; and it is further

ORDERED and ADJUDGED that the arbitration award issued by AFI on February 1, 2023 is **CONFIRMED**; and it is further

ORDERED that the Clerk of the Court shall enter judgment in accordance with said arbitration award; and it is further

ORDERED that any requested relief not expressly addressed herein has been considered and is denied; and it is further

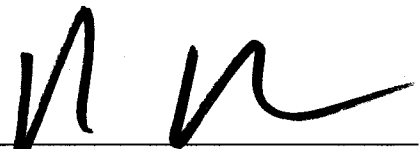
ORDERED that the Clerk shall mark Motion Sequence 1 decided in all court records; and it is further

ORDERED that the Clerk shall mark this proceeding disposed in all court records.

This constitutes the decision and order of the Court.

August 5, 2024

 DATE



 SHAHABUDDEN ABID ALLY, A.J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	STAY CASE
			<input type="checkbox"/>	REFERENCE