

**Country-Wide Ins. Co. v Wellness Diagnostic Imaging  
PC**

2024 NY Slip Op 32928(U)

August 19, 2024

Supreme Court, New York County

Docket Number: Index No. 652297/2020

Judge: Anar Rathod Patel

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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COUNTRY-WIDE INSURANCE COMPANY	<b>INDEX NO.</b>	<u>652297/2020</u>
Petitioner,	<b>MOTION</b>	
- v -	<b>DATE</b>	<u>06/05/2020</u>
WELLNESS DIAGNOSTIC IMAGING PC,	<b>MOTION SEQ.</b>	
Respondent.	<b>NO.</b>	<u>001</u>

**DECISION + ORDER ON MOTION**

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**HON. ANAR RATHOD PATEL:**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1–7, 9–18 were read on this motion to/for VACATE – DECISION / ORDER / JUDGMENT / AWARD.

**Relevant Factual and Procedural History**

This is a special proceeding, pursuant to CPLR Article 75, commenced by Petitioner Country-Wide Insurance Company (“Petitioner”) seeking an order and judgment vacating master arbitration award of Burt Feilich (dated March 11, 2020), which affirmed the no-fault arbitration award of Nicholas Tafuri (dated December 24, 2019) granting Respondent Wellness Diagnostic Imaging PC’s (“Respondent”), as assignee of Javokhir Abdurakhmanov (“Assignor” or “Claimant”), claim for no-fault insurance compensation for health service expenses. Pursuant to a hearing held on December 5, 2019, Arbitrator Tafuri awarded the amount of \$912.00, together with interest, attorneys’ fees, and additional fees, sought by Respondent for providing services to its assignor, who claimed to have been injured in a motor vehicle accident on October 16, 2017.

Petitioner commenced the present action by filing a Notice of Petition and Petition on June 5, 2020. NYSCEF Doc. Nos. 1, 2. This matter was initially assigned to Judge Debra James and was reassigned subsequently to this Court.

**Discussion**

The standard of review in Article 75 proceedings depends on the amount awarded by the arbitrator. Where the amount in contention does not exceed five thousand dollars (\$5,000.00), courts grant deference to the findings of the arbitrators. “In cases of compulsory arbitration, this court has held that CPLR article 75 ‘includes review . . . of whether the award is supported by evidence or other basis in reason.’ This standard has been interpreted to import into [A]rticle 75

review of compulsory arbitrations the arbitrary and capricious standard of [A]rticle 78 review.” *Matter of Petrofsky (Allstate Ins. Co.)*, 54 N.Y.2d 207, 211 (1981) (quoting *Mount St. Mary’s Hosp. of Niagara Falls v. Catherwood*, 26 N.Y.2d 493, 508 (1970)). Thus, if the amount awarded in arbitration is less than the statutory amount, the judiciary is restricted by the findings of the arbitrators. Only when review has basis in an enumerated ground in CPLR § 7511 or the court finds that the arbitration award is a result of arbitrary or capricious determinations by the arbitrators may the court interject.

“Further, ‘a court is bound by the arbitrator’s factual findings and interpretations of the contract,’ and it ‘cannot examine the merits of an arbitration award and substitute its judgment for that of the arbitrator simply because it believes its interpretation would be the better one.’ The ‘arbitrator’s award will not be vacated for errors of law and fact committed by the arbitrator and the courts should not assume the role of overseers to mold the award to conform to their sense of justice.’” *Metro. Transp. Auth. v. Westfield Fulton Ctr., LLC*, No. 2023–03965, 2024 WL 2853484, at \*1 (1st Dept. 2024) (internal citations omitted).

As the amount at issue, \$912.00, is less than the statutory amount, this Court will review the arbitrator’s award under an arbitrary and capricious standard. This Court will only vacate the award if it was granted as a result of arbitrary and capricious determinations by the arbitrators or if there is basis in an enumerated ground in CPLR § 7511(b). “[J]udicial review of arbitration awards is extremely limited. An arbitration award must be upheld when the arbitrator ‘offer[s] even a barely colorable justification for the outcome reached.’” *Wien & Malkin LLP v. Helmsley-Spear, Inc.*, 6 N.Y.3d 471, 479 (2006).

Petitioner initiated this action to vacate the arbitration award pursuant to CPLR § 7511(b)(1)(i), (iii) and (iv). There is no argument or support in the record to find that the award was procured by “corruption, fraud or misconduct” beyond Petitioner’s statement that the action was pursuant to CPLR § 7511(b)(1)(i). Similarly, there is no argument or support in the record to find that the rights of Petitioner were prejudiced by “failure to follow the procedure of this article.” CPLR § 7511(b)(1)(iv).

Petitioner contends that the hearing arbitrator award was irrational, unsupported by the evidence, arbitrary, and capricious. The expenses at issue relate to Respondent’s claims for a lumbar spine MRI and related services following injuries sustained by the non-party assignor during the October 2017 accident. Petitioner denied the claim based on a no-show defense that the assignor failed to appear at two Examinations Under Oath (EUO) scheduled for January 29, 2018 and May 14, 2018.

Arbitrator Tafuri reviewed the record, including EUO scheduling letters and no-show EUO transcripts. NYSCEF Doc. No. 3 (Arbitrator Tafuri’s No-Fault Arbitration Award). He identified and cited to documentation showing that the EUO scheduled for January 29, 2018 was rescheduled on consent by both parties. “Therefore, the only basis remaining in its denial is EIP’s failure to appear for an EUO on one scheduled date: 5/14/18, which is insufficient to sustain such a defense,” as case law requires a minimum of two occasions where the claimant fails to appear for an EUO. *Id.* at 4. These factual determinations are not actions that exceed the hearing arbitrator’s authority.

This Court must defer to factual determinations as made by the hearing arbitrator. Likewise, the master arbitrator is limited to the factual record presented to and determinations made by the hearing arbitrator. A master arbitrator does not have “the power to review, *de novo*, the matter originally presented to the arbitrator. A master arbitrator exceeds his statutory power by making his own factual determination, by reviewing factual and procedural errors committed during the course of arbitration, by weighing the evidence . . . .” *Matter of Allstate Ins. Co. v. Keegan*, 201 A.D.2d 724, 725 (2d Dept. 1994) (internal citations omitted). Further, a “master arbitrator shall only consider those matters which were the subject of the arbitration below or which were included in the arbitration award appealed from.” 11 NYCRR § 65-4.10(c)(6). Considering these restraints on the master arbitrator’s scope of review, Arbitrator Feilich was correct to rely on the factual determinations of Arbitrator Tafuri and affirm the hearing arbitrator’s award in its entirety. *See* NYSCEF Doc. No. 6 at 4 (Arbitrator Feilich’s Master Arbitration Award) (“All of the above information and evidence was presented to the lower arbitrator and he made a factual determination that the initial EUO scheduled for January 29th, 2018 was adjourned and that respondent could not rely on that missed EUO appearance in support of its denial of claim. That factual finding was reasonable in consideration of all of the evidence, and it is not subject to review in the instant proceeding.”). Accordingly, these actions do not support finding that the master arbitrator exceeded his authority.

Petitioner further argues that there is a declaratory judgment against Claimant, Respondent, and other non-parties in the Supreme Court of New York County captioned *Country-Wide Insurance Company v. Javokhir Abdurakhmanov et al.* (Index No. 655642/2018), pursuant to an Order dated January 2, 2020 (Kahn, J.). Accordingly, Petitioner maintains that the award should be vacated by this Court because of *collateral estoppel*. First, this argument was considered by Arbitrator Feilich, who determined that:

as the arbitration hearing took place on December 5th, 2019, with the award of the lower arbitrator dated December 24th, 2019, both prior to the date the Order and Default Judgment were issued, it can not be reasonably argued that the Order and Judgment of the Court, with Notice of Entry dated January 28th, 2020, had either *res judicata* and/or *collateral estoppel* effect on that previously concluded arbitration proceeding. *See*: 11 NYCRR section 65- 4.10(c)(1),(6).

*Id.* at 5. More importantly, however, said judgment was vacated pursuant a Decision and Order dated March 17, 2021 (Bluth, J.). *See* NYSCEF Doc. No. 87 (Index No. 655642/2018). Accordingly, Petitioner’s argument is moot.

Because none of the grounds for vacating an award, as enumerated in CPLR § 7511(b), are present in the record, and the hearing arbitrator, as affirmed by the master arbitrator, provided at least “a colorable justification for the outcome reached,” this Court must deny the petition to vacate the arbitration award. *Wein & Malkin, LLP*, 6 N.Y.3d at 479. Accordingly, the award is “confirmed pursuant to CPLR § 7511(e), which mandates confirmation upon denial of a motion to vacate or modify.” *Blumenkopf v. Proskauer Rose LLP*, 95 A.D.3d 647, 648 (1st Dept. 2012).

Finally, Respondent seeks attorneys’ fees in addition to those awarded in the underlying arbitration proceedings pursuant to 11 NYCRR 65-4.10(j)(4) for the work performed in connection with the instant proceeding. Respondent does not submit any affirmation in support of attorneys’ fees stating, for example, attorney qualifications, usual hourly billing rate, or time/fees incurred. Rather, Respondent seeks an award of *quantum meruit* attorneys’ fees for the fair and reasonable value of legal services in an amount to be fixed by this Court.

Respondent is entitled to an award of attorney’s fees as the First Department has held that “as a prevailing applicant for payment by petitioner insurer of attorney’s fees in an [A]rticle 75 proceeding reviewing an arbitration award, [respondent] is entitled to an additional award of attorney’s fees, as fixed by the court.” *Country-Wide Ins. Co. v. TC Acupuncture P.C.*, 179 A.D.3d 414, 414–15 (N.Y. App. Div. 1st Dept. 2020); *see also Matter of Country-Wide Ins. Co. v. Bay Needle Care Acupuncture, P.C.*, 162 A.D.3d 407 (N.Y. App. Div. 1st Dept. 2018). In opposing Respondent’s application for attorney’s fees, Petitioner relies on *Country-Wide Ins. Co. v. Gotham Med., P.C.*, 50 Misc. 3d 712 (N.Y. Cty. Sup. Ct. 2015) where the court denied an insured’s application for attorney’s fees in a litigation commenced by the insurer. The Court finds *Country-Wide Ins. Co. v. Gotham Med., P.C.* inapposite here as it is a declaratory judgment action while this case is an appeal from a master arbitration award where parties, by express provision of 11 NYCRR 65-4.10(j)(4), may seek attorney’s fees.

The Court declines to fix an award of attorney’s fees pursuant to a *quantum meruit* theory where Respondent has not set forth the basis for reasonable attorney’s fees incurred in connection with this proceeding.

Rather, the Court directs Respondent to file an affirmation of legal services within seven (7) days of this Decision and Order.

As such, it is hereby

**ORDERED** that the Petition is denied and the awards of the No-Fault Arbitrator and Master Arbitrator rendered in favor of Respondent Wellness Diagnostics Imaging PC., and against Petitioner Country-Wide Insurance are confirmed; and it is further

**ORDERED** that Respondent shall file an affirmation of legal services within seven (7) days of this Decision and Order to the extent it seeks attorneys’ fees pursuant to 11 NYCRR 65-4.10(j)(4); and it is further

**ORDERED** that the Clerk of the Court shall enter judgment accordingly.

8/19/2024  
DATE

  
ANAR RATHOD PATEL, A.J.S.C.

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