

**Country-Wide Ins. Co. v Optimal Care Surgical
Servs., LLC**

2024 NY Slip Op 32995(U)

August 20, 2024

Supreme Court, New York County

Docket Number: Index No. 652195/2021

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: PART 45

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COUNTRY-WIDE INSURANCE COMPANY

INDEX NO. 652195/2021

Petitioner,

MOTION DATE 04/02/2021

- v -

OPTIMAL CARE SURGICAL SERVICES, LLC,

MOTION SEQ. NO. 001

Respondent.

DECISION + ORDER ON MOTION

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HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1–6, 8–14 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 Richard B. Ancowitz (dated January 11, 2021), which affirmed the no-fault arbitration award of Jan Chow (dated November 9, 2020) granting Respondent Optimal Care Surgical Services, LLC’s, as assignee of Jodene Davis, (“Respondent”) claim for no-fault insurance compensation for health service expenses. Pursuant to a hearing held on November 6, 2020, Arbitrator Chow awarded the amount of \$854.82, 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 February 4, 2019.

Petitioner commenced the present action by filing a Notice of Petition and Petition on April 2, 2021. 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, \$854.82, 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)(iii). Petitioner contends that the hearing arbitrator award was irrational, unsupported by the evidence, arbitrary, and capricious because it directed the payment of healthcare services that Petitioner maintains were not medically necessary. The expenses at issue relate to Respondent’s claims for a physician assistant’s fees after the non-party assignor underwent a surgical procedure to her left knee following injuries sustained during the February 2019 accident. Petitioner denied the claim based upon the Independent Medical Examination Report of Dr. Julio V. Westerband (dated June 17, 2019), who opined that the assignor did not require further orthopedic treatment. NYSCEF Doc. No. 5 at 19.

Arbitrator Chow, however, reviewed Dr. Westerband’s IME Report and determined that:

The peer reviewer failed to sufficiently set forth the standard of care for when a knee surgery would be medically necessary... The peer reviewer did not sufficiently establish this assignor’s meniscal tears to be degenerative in nature... Moreover, the physical therapy treatment notes reveal that prior to the left knee surgery, the assignor underwent 8 weeks of physical therapy without any change in her physical examination findings. The peer reviewer failed to discuss this in his analysis.

NYSCEF Doc. No. 3 at 3 (Arbitrator Chow’s No Fault Arbitration Award). “It is within the province of the lower arbitrator to determine what evidence to accept or reject and what inferences should be drawn based on the evidence.” *Community Med. Imaging P.C. v. American Tr. Ins. Co.*, 206 N.Y.S.3d 919 (N.Y. Cnty. Sup. Ct. 2024). 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 Ancowitz was correct to rely on the factual determinations of Arbitrator Chow and affirm the hearing arbitrator’s award in its entirety. *See* NYSCEF Doc. No. 6 at 3–4 (Arbitrator Ancowitz’s Master Arbitration Award) (“Specifically, I see no reason to disturb the arbitrator’s weighing of the medical evidence, and the finding that respondent’s peer review report was not sufficient to warrant denial of the claim at issue... As per the above regulation and corresponding case law, the weighing of evidence is simply not the function of a master arbitrator. As a result, I find that the award here clearly had a plausible basis, was not irrational, and therefore should not be disturbed.”). Accordingly, these actions do not support finding that the master arbitrator exceeded his authority.

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).

Attorney’s Fees

Respondent seeks attorney’s fees pursuant to 11 NYCRR 65-4.10(j)(4) for the work performed in connection with the instant proceeding. In support, Respondent submits an Affirmation in Support of Attorney Fees stating, *inter alia*, the qualifications of counsel, David M. Gottlieb, *Esq.* of Samandarov & Associates, PC; counsel’s usual hourly billing rate of \$400/hour; and a summary of the total amount of time incurred and the nature of the time incurred in connection with this proceeding—3 hours. NYSCEF Doc. No. 10. Counsel provides the Court with sufficient information to determine the reasonableness of the attorney’s fees incurred.

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 (1st Dept. 2020); *see also Matter of Country-Wide Ins. Co. v. Bay Needle Care Acupuncture, P.C.*, 162 A.D.3d 407 (1st Dept. 2018). The Court is permitted to fix an amount for an additional award of attorney’s fees pursuant to 11 NYCRR 65-4.10(j)(4). Accordingly, the Court awards Respondent additional attorney’s fees in the total amount of \$1,200.

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 Optimal Care Surgical Services, LLC, and against Petitioner Country-Wide Insurance are confirmed; and it is further

ORDERED that Respondent is awarded additional attorney’s fees in the amount of one thousand, two hundred dollars and zero cents (\$1,200.00); and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that the Clerk of the Court mark this case as disposed.

August 20, 2024

DATE



ANAR RATHOD PATEL, A.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