

**Matter of New York Black Car Operators' Injury
Compensation Fund, Inc. v LM Gen. Ins. Co.**

2024 NY Slip Op 33206(U)

September 13, 2024

Supreme Court, New York County

Docket Number: Index No. 452845/2023

Judge: John J. Kelley

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**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

NEW YORK BLACK CAR OPERATORS' INJURY
COMPENSATION FUND, INC., also known as NEW YORK
BLACK CAR FUND, as subrogee of ATEF SOULIMAN,

Petitioner,

- v -

LM GENERAL INSURANCE COMPANY,

Respondent.

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INDEX NO. 452845/2023

MOTION DATE 07/12/2024

MOTION SEQ. NO. 001

**DECISION, ORDER, AND
JUDGMENT**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10

were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

New York Black Car Operators' Injury Compensation Fund, Inc. (NYBCOICF), also known as New York Black Car Fund, petitions pursuant to CPLR 7510 to confirm an arbitration award dated June 15, 2023, made by an arbitrator acting under the auspices of Arbitration Forums, Inc. (AFI), and pursuant to CPLR 7514 to direct the entry of judgment thereon. The respondent, LM General Insurance Company (LM), does not oppose the petition. The petition is granted, the award rendered under AFI Docket No. I2301EAEE74-C1-D1 is confirmed, and NYBCOICF is entitled to enter a money judgment against the LM in the principal sum of \$2,532.46, plus statutory interest on that sum from June 15, 2023.

NYBCOICF was the insurer of a motor vehicle owned by Atef Souliman and operated by Souliman on behalf of a ride-share company that is a member of NYBCOICF. LM is the insurer of a Toyota sedan that was owned by Elena P. Cunningham and operated by Jo Zena Cunningham. On October 30, 2020, at 7:55 p.m., Souliman was operating his vehicle on 4th Avenue in Brooklyn, New York, near that avenue's intersection with 35th Street, when he

stopped for traffic that was in front of him, and the Cunningham vehicle struck his vehicle in the rear. Jo Zena Cunningham, however, reported to police officers who responded to the scene of the accident that Souliman's vehicle was "double parked," and that the collision occurred when she attempted to drive around Souliman's vehicle.

Souliman thereafter made a claim upon his insurer, NYBCOICF, for Workers' Compensation benefits in lieu of first-party no-fault benefits, including claims for medical expenses and lost wages (*see A.I. Transp. v New York State Ins. Fund*, 301 AD2d 380, 380 [1st Dept 2003]; *Arvatz v Empire Mut. Ins. Co.*, 171 AD2d 262, 268 [1st Dept 1991]; Insurance Law §§ 5102[a], [b]; 5103 [a]; Workers' Compensation Law § 2[3]). Ultimately, NYBCOICF paid claims to Souliman or on Souliman's behalf in the sums of \$2,232.46 in medical expenses, and \$300.00 in lost wages, for a total of \$2,532.46.

Inasmuch as the vehicle that NYBCOICF had insured was a "motor vehicle used principally for the transportation of persons or property for hire" (Insurance Law § 5105[a]), NYBCOICF was entitled to seek a personal injury protection (PIP) or Workers' Compensation "loss transfer" from LM to reimburse it for the benefits that it had paid out to Souliman (*see A.I. Transp. v New York State Ins. Fund*, 301 AD2d at 380). To obtain this loss transfer, NYBCOICF was required to establish that Jo Zena Cunningham, as the operator of Elena P. Cunningham's vehicle, was completely or partially at fault in the happening of the accident. Insurance Law § 5105(b) provides that, where an insurer seeks to recover first-party benefits/PIP or Workers' Compensation 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 arbitration matters (*see* 11 NYCRR 65-4.11[b][1]).

On April 28, 2023, NYBCOICF demanded inter-insurer arbitration with LM before AFI with respect to Souliman's \$2,232.46 in medical expenses, and \$300.00 in lost wages, and thus filed a PIP loss-transfer arbitration claim with AFI. After a hearing, the arbitrator found that Jo Zena Cunningham was 100% at fault in the happening of the accident, explaining that LM had conceded liability. The arbitrator further found that the amounts of both the claims for medical expenses and lost wages that NYBCOICF had paid Souliman, and which had been sought in the arbitration, had been proven. Hence, the arbitrator concluded that LM was obligated to pay NYBCOICF the total sum of \$2,532.46 in first-party benefits for Souliman's basic economic loss. On October 27, 2023, NYBCOICF commenced this proceeding to confirm the award.

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." Thus, the award may only be vacated if the court finds that the rights of a party were prejudiced by:

"(i) corruption, fraud or misconduct in procuring the award; or (ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; or (iii) an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or (iv) failure to follow the procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection"

(CPLR 7511[b][1]). The grounds specified in CPLR 7511 for vacatur of an arbitration award are exclusive (see *Bernstein Family Ltd. Partnership v Sovereign Partners, L.P.*, 66 AD3d 1, 8 [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]). Nonetheless, where the award is one, such as the one here, that is rendered after compulsory arbitration, i.e., an arbitration mandated by statute, the court must give "closer judicial scrutiny of the arbitrator's determination under CPLR 7511(b)" than would be warranted in reviewing an award made after a consensual arbitration (*Matter of Motor Veh. Acc. Indem.*

Corp. v Aetna Cas. & Sur. Co., 89 NY2d 214, 223 [1996]; see *Matter of Fiduciary Ins. Co. v American Bankers Ins. Co. of Fla.*, 132 AD3d 40, 46 [2d Dept 2015] [with respect to determinations of law, the applicable standard in mandatory no-fault arbitrations is whether any reasonable hypothesis can be found to support the questioned interpretation]; *Matter of Lackow v Department of Educ. (or "Board") of City of N.Y.*, 51 AD3d 563, 567 [1st Dept 2008]; *Matter of Curley v State Farm Ins. Co.*, 269 AD2d 240, 242 [1st Dept 2000]; *Matter of Travelers Ins. Co. v Job*, 239 AD2d 289, 291 [1st Dept 1997]). “To be upheld, an award in a compulsory arbitration proceeding must have evidentiary support and cannot be arbitrary and capricious” (*Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d at 223 [citations omitted]; see *Matter of Santer v Board of Educ. of E. Meadow Union Free Sch. Dist.*, 23 NY3d 251, 261 [2014]; *Matter of Travelers Ins. Co. v Job*, 239 AD2d at 291).

The instant proceeding to confirm the arbitration award was timely commenced on October 27, 2023 (see CPLR 304[a]). NYBCOICF contends that the award was proper in all respects, and that no grounds exist for modification or vacatur. The court agrees with NYBCOICF and concludes that the award was rational. Hence, the court further concludes that NYBCOICF is entitled both to the confirmation of the award and to the entry of a money judgment in the principal sum of \$2,532.46. The money judgment must bear interest from the date of the arbitration award, that is, from June 15, 2023 (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 *Matter of New York Black Car Operators' Injury Compensation*

Fund, Inc., also known as New York Black Car Fund v LM General Insurance Company, Arbitration Forums, Inc., Docket No. I2301EAEE74-C1-D1, dated June 15, 2023, be, and hereby is, confirmed; and it is further,

ORDERED that the Clerk of the court shall enter a money judgment in favor of Black Car Operators' Injury Compensation Fund, Inc., also known as New York Black Car Fund, and against LM General Insurance Company, in the principal sum of \$2,532.46, plus statutory interest at 9% per annum from June 15, 2023.

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

9/13/2024
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: