

Hillside Physical Therapy, PC v Geico Cas. Co.

2025 NY Slip Op 32227(U)

June 18, 2025

Supreme Court, New York County

Docket Number: Index No. 650965/2023

Judge: Judy H. Kim

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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. JUDY H. KIM PART 04

Justice

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HILLSIDE PHYSICAL THERAPY, PC A/A/O PETER
MWAKAJUMBA,

Petitioner,

- v -

GEICO CASUALTY COMPANY,

Respondent.

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INDEX NO. 650965/2023

MOTION DATE 02/22/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 11, 12
were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

Upon the foregoing documents, the petition to vacate the arbitration award is denied.

This action arises from a motor vehicle accident on April 13, 2021, in which petitioner’s assignor, Peter Mwakajumba, sustained injuries. Petitioner sought first-party no-fault benefits reimbursement from respondent in the amount of \$1,246.91 for medical treatments it rendered to Mwakajumba, which claim was denied by respondent.

Petitioner then submitted this claim to arbitration and on January 5, 2023, Arbitrator Mitchell Lustig issued an award in favor of respondent (the “Award”) concluding that “Respondent established that No-Fault benefits were exhausted before it was obligated to pay any additional amount that may be due and owing on the claim” (NYSCEF Doc No. 7, arbitration award).

Arbitrator Lustig also wrote, as pertinent here, that:

While an insurer is required to show more than the mere exhaustion of benefits and must also demonstrate that the payments which led to the depletion of policy benefits were made in compliance with 11 NYCRR § 65-3.15 (Computation of basic economic loss), see *Nvack Hosp. v. General Motors Acceptance Corp.*, 8 N.Y.3d 294 (2007); *New York & Presby. Hosp. v. Allstate Ins. Co.*, 12 A.D.3d 579,

580 (2d Dept. 2004), 11 NYCRR § 65-3.15 does not preclude an insurer or self-insurer from paying other providers' claims during a time that the 30-day statutory period in which to pay or deny a claim is tolled pursuant to a request for additional verification, see *Nyack Hosp. v. General Motors Acceptance Corp.*, 8 N.Y.3d 294 (2007); *Mount Sinai Hosp. v. Country Wide Ins. Co.*, 85 A.D.3d 1136 (2d Dept. 2011), nor does it bar an insurer or self-insurer, following the timely denial of a claim, from paying other providers' undisputed claims pending resolution of the dispute, see *Allstate Prop. & Cas. Ins. Co. v. Northeast Anesthesia & Pain Mgt.*, 2016 NY Slip Op 50828(U) (App Term 1st Dept. May 31, 2016); *Harmonic Physical Therapy. P.C. v. Praetorian Ins. Co.*, 2015 NY Slip Op 50525(U) (App Term 1st Dept., April 14, 2015); *integrated Medical Rehab & Diagnostic P.C. and Geico Ins. Co.*, AAA Case No. 412013081427, AAA Assessment No. 17 991 R 25938 14 (Master arb. Victor J. Hershendorfer, May 9, 2014). In such instances, the payments are made in compliance with the priority of payment regulation because they were made before the insurer or self-insurer was obligated to pay the disputed claim. *Id.*

To the extent that the Appellate Term for the Second Department's recent decisions in *Island Life Chiropractic. P.C. v. Commerce Ins. Co.*, 2017 NY Slip Op 50856(U) (App Term 2d, 11th & 13th Jud Dists. June 23, 2017); *Ortho Passive Motion. Inc. v. Allstate Ins. Co.*, 2017 NY Slip Op 50771(U) (App Term 2d, 1 lth & 13th Jud Dists. June 2, 2017); *Alleviation Med. Servs.. P.C. v. Allstate Ins. Co.*, 2017 NY Slip Op 27097 (App Term 2d, 11th & 13th Jud Dists. March 29, 2017), are at odds with the holdings set forth in *Allstate Prop. & Cas. Ins. Co. v. Northeast Anesthesia & Pain Mgt.*, 2016 NY Slip Op 50828(U) (App Term 1st Dept. May 31, 2016); *Harmonic Physical Therapy. P.C. v. Praetorian Ins. Co.*, 2015 NY Slip Op 50525(U) (App Term 1st Dept., April 14, 2015), I decline to follow them.

(*id.*).

The Award was affirmed by Master Arbitrator Richard B. Ancowitz on February 6, 2023.

The Master Arbitration Award stated, in pertinent part, that:

Upon review of the briefing submitted by the parties, given the facts as found by the arbitrator, I cannot find the award now under review to be erroneous as a matter of law or arbitrary and capricious. Indeed, there is a split between the *Alleviation* and the *Harmonic* lines of cases, making this master arbitrator's review of the matter a close case.

Indeed, the Court of Appeals holding in *Nyack Hosp. v. General Motors Acceptance Corp.*, 8 N.Y.3d 294, 301 (2007) must still control, as must the applicable regulation, 11 NYCRR 65-3.15. I do find, as demonstrated in the award, that the arbitrator did consider these important authorities, albeit different courts have come to different conclusions about the applicability of same.

Thus, given the split of judicial authority which exists, I see no clear error of law in the award under review. Nor do I find the award to be arbitrary and capricious or otherwise infirm.

(NYSCEF Doc No. 8, master arbitration award)

Petitioner now seeks to vacate the Award, pursuant to CPLR 7511 arguing that the arbitrator erred as a matter of law because “there was sufficient coverage remaining on the insurance policy when the billing was received, [and therefore] a policy exhaustion defense [did] not exist” (NYSCEF Doc No. 1, petition at ¶15). However, this exact argument has been repeatedly rejected by the Appellate Division, First Department, which has stated that vacatur of an arbitration award is not appropriate where, as here, “petitioner does not dispute that the subject policy was exhausted prior to the underlying arbitration, but argues that its claim for no-fault compensation, which was submitted and denied prior to the exhaustion of the policy, should retain priority of payment” (*New Millennium Pain & Spine Medicine, P.C. v Progressive Cas. Ins. Co.*, 220 AD3d 578 [1st Dept 2023] [internal citations omitted]; *see also New Millennium Pain & Spine Medicine, P.C. v Garrison Prop. & Cas. Ins. Co.*, 224 AD3d 428, 429 [1st Dept 2024]; *Lam Quan, MD, PC v GEICO Gen. Ins. Co.*, 223 AD3d 503, 503 [1st Dept 2024]). In addition, “[t]he fact that the arbitrator followed First Department precedent in *Harmonic Physical Therapy, P.C. v Praetorian Ins. Co.* ... rather than Second Department precedent in *Alleviation Med. Servs., P.C. v Allstate Ins. Co.* ... does not warrant reversal” (*id.*).

Accordingly, it is

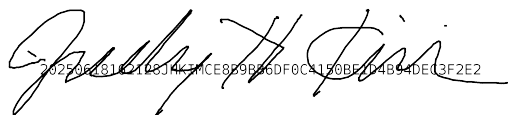
ORDERED and **ADJUDGED** that the petition is denied and this special proceeding dismissed; and it is further,

ORDERED and **ADJUDGED** that the February 6, 2023 award of Master Arbitrator Richard B. Ancowitz, in American Arbitration Association Case No. 99-22-1236-0063 is confirmed; and it is further

ORDERED that respondent shall serve a copy of this decision and order, with notice of entry, upon petitioner as well as the Clerk of the Court, who is directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases (accessible at the "E filing" page on this court's website).

This constitutes the decision, order, and judgment of the Court.



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6/18/2025

DATE

HON. JUDY H. KIM, 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: