

American Tr. Ins. Co. v Unicorn Acupuncture, PC

2025 NY Slip Op 32434(U)

July 7, 2025

Supreme Court, New York County

Docket Number: Index No. 651373/2025

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

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AMERICAN TRANSIT INSURANCE COMPANY,

Petitioner,

- v -

UNICORN ACUPUNCTURE, PC,

Respondent.

-----X

INDEX NO. 651373/2025

MOTION DATE 03/11/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 12, 13, 14, 15, 16

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, and after a final submission date of May 20, 2025, the Court denies Petitioner American Transit Insurance Company's ("Petitioner") petition to vacate the arbitration award issued by Arbitrator Lester Hill ("Arbitrator Hill") dated September 21, 2024, in favor of Respondent Unicorn Acupuncture, PC ("Respondent"), and affirmed by master arbitrator Steven Rickman ("Master Arbitrator Rickman") on January 1, 2025. Respondent's cross-petition for attorneys' fees is granted.

Petitioner refused to pay certain medical bills from Respondent for acupuncture services provided to non-party Sebastian Gutierrez ("Mr. Gutierrez") because allegedly they were not medically necessary. Mr. Gutierrez was in a motor vehicle accident on November 25, 2022, and received physical therapy and chiropractic treatment for neck and low back pain, including acupuncture from Respondent from January 2023 through July 2023. Petitioner relied on a report from Dr. Peter Chiu, who believed the acupuncture was unnecessary given Mr. Gutierrez's concurrent treatment of physical therapy and chiropractic treatment. While Arbitrator Hill found that Petitioner met its burden of showing the acupuncture was unnecessary, he also found that the

Respondent's affidavit of acupuncturist Wang Dekun rebutted Petitioner's argument that the acupuncture was medically unnecessary. Therefore, Arbitrator Hill ruled in Respondent's favor. Master Arbitrator Rickman affirmed Arbitrator Hill, finding Arbitrator Hill's award was rationally grounded, and it was not for Master Arbitrator to conduct a *de novo* review of the evidence. Petitioner now asks this Court to reverse Arbitrator Hill and Master Arbitrator Rickman.

In the context of no-fault arbitrations, an arbitrator's decision will not be vacated where it is rationally based (*Petrofsky v Allstate Ins. Co.*, 54 NY2d 207 [1981]). An Article 75 proceeding is not an opportunity for "judicial second-guessing" of an arbitrator's findings, and courts are bound by the arbitrator's factual findings (*Metropolitan Transportation Auth. v Westfield Fulton Center, LLC*, 228 AD3d 435, 436 [1st Dept 2024]). Here, the Court finds the master arbitrator's affirmance of the lower arbitrator's award was not irrational and was based in the applicable no-fault regulations (*see, e.g. Global Liberty Ins. Co. v Cambridge Medical, P.C.*, 193 AD3d 573 [1st Dept 2021]). When presented with conflicting evidence, it is up to the arbitrator to evaluate and weigh which evidence is determinative (*Brown & Williamson Tobacco Corp. v Chesley*, 7 AD3d 368, 373-74 [1st Dept 2004] citing *Hackett v Millbank, Tweed, Hadley & McCloy*, 86 NY2d 146 [1995]).

Based on the record before the Court, there is no basis to vacate the arbitration award in favor of Respondent. Arbitrator Hill considered all the evidence presented before him, weighed the competing medical reports and affidavits, and concluded that Petitioner failed to establish its lack of medical necessity defense. Arbitrator Hill's award is rationally based and grounded in factual findings which this Court is not permitted to disturb. Therefore, the petition is denied.

Because Respondent successfully defended this petition to vacate an arbitration award, it is entitled to attorneys' fees pursuant to 11 NYCRR § 65-4.10(j)(4) (*see also American Transit*

Ins. Co. v Rutland Med. PC, 224 AD3d 531, 531 [1st Dept 2024]). Moreover, the fee award is in an amount fixed by the Court adjudicating the matter (see *Matter of Country-Wide Ins. Co. v TC Acupuncture P.C.*, 172 AD3d 598 [1st Dept 2019; see also *Matter of Country-Wide Ins. Co. v Bay Needle Care Acupuncture, P.C.*, 162 AD3d 407, 408 [1st Dept 2018])). Therefore, the Petitioner's argument about a statutory cap on fees is incorrect and misplaced. Moreover, the Court finds that Respondent's attorney's 1.7 hours spent opposing the Petition is reasonable. The Court also finds the requested hourly fee of \$500 to be reasonable. Thus, Respondent's cross-petition for a fee award of \$850.00 is granted.

Accordingly, it is hereby,

ORDERED that Petitioner American Transit Insurance Company's petition to vacate the arbitration award issued by Arbitrator Lester Hill dated September 21, 2024, in favor of Respondent Unicorn Acupuncture, PC, and affirmed by master arbitrator Rickman is denied; and it is further

ORDERED that within ten days of entry of this Decision and Order, Respondent Unicorn Acupuncture, PC shall submit a proposed order and judgment granting Respondent Unicorn Acupuncture, PC's cross-petition, and granting it a judgment against Petitioner American Transit Insurance Company for the amount awarded (\$3,236.40) by Arbitrator Lester Hill plus the attorneys fees awarded herein (\$850.00). The proposed order and judgment shall be submitted via e-mail to SFC-Part33-Clerk@nycourts.gov; and it is further

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ORDERED that within ten days of entry, counsel for Respondent shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

7/7/2025
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

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