American Tr. Ins. Co. v Unicorn Acupuncture, PC
2025 NY Slip Op 32553(U)
July 11, 2025
Supreme Court, New York County
Docket Number: Index No. 650278/2025
Judge: Leslie A. Stroth

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LESLIE A. STROTH** **PART** **12M**

Justice

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AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

UNICORN ACUPUNCTURE, PC,

Defendant.

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INDEX NO. 650278/2025

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13, 14, 15 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Issue Presented

NYCRR 65-4.10(a)(4) provides that a Master Arbitrator may vacate a lower arbitrator's award if the underlying decision was incorrect as a matter of law (procedural or factual errors committed in the arbitration below are not encompassed within this ground). Petitioner contends that the arbitrator and master arbitrator did not follow well-settled law holding that an assignor's failure to comply with an insurance policy is grounds to deny coverage and the evidence sufficiently supported its no-show defense that the Assignor did not appear for a required Independent Medical Examinations ("IME"). The question is whether the master arbitrator's determination was corrupt, influenced by the arbitrators partiality, or any other ground in CPLR 7511(b) warrants vacatur of the award rendered in AAA Case No. 99-24-1339-9582.

Background

On February 8, 2023, Franco Alexander Peraza Navas, ("Assignor") was involved in a motor vehicle accident when, while operating a moped he collied with an open livery vehicle

door. (NY St Cts Elec Filing [NYSCEF] Doc No. 6 at 192). Petitioner American Transit Insurance Co., is the insurer of the livery vehicle and issued a New York insurance policy with a no-fault endorsement providing coverage to any eligible injured person for all necessary expenses resulting from a motor vehicle accident up to the minimum statutory amount of $50,000. (NYSCEF Doc. 1 ¶ 2). Respondent Unicorn Acupuncture, P.C. is a medical provider that rendered treatment to Assignor for injuries sustained in the accident. (NYSCEF Doc No. 1 ¶ 20). Respondent submitted claims to Petitioner totaling in $2,876 for services from February 10, 2023 – November 20, 2023. Petitioner denied the claims based on Assignor's alleged failure to appear at IMEs on October 2, 2023, and October 16, 2023.

Respondent then initiated arbitration, claiming entitlement to $2,876.38 for dates of service 2/10/2023 – 11/20/2023. (NYSCEF Doc No. 1 ¶ 27). As part of its defense in the arbitration proceedings, Petitioner submitted copies of the IME notices that were mailed to Assignor, scheduling IMEs with chiropractor, Brian Wolin, for October 2, 2023, and October 16, 2023, and an affidavit from Brian Wolin attesting to assignor's failure to appear on said dates. However, the notice for the first IME was scheduled for 8:45 AM while Wolin testified that he was there at 9:15 AM.

Arbitrator Jan Chow, Esq. determined that Respondent established its prima facie case with proof that it submitted a proper claim and Petitioner established timely denials, and the burden then shifted to Petitioner to substantiate its defenses. (NYSCEF Doc No. 3, Exhibit A, Arbitration Award ¶ 4). Citing the discrepancy between the time on the notice and the affidavit, the Arbitrator determined the evidence is insufficient to maintain Petitioner's no-show defense and awarded the full $2,876 requested by Respondent, including statutory interest and attorney's fees and costs. (*Id.* at 3, 5).

Petitioner then appealed and the case was assigned to Master Arbitrator Henry Sawits, Esq., who subsequently upheld the lower arbitration award. (NYSCEF Doc. 1 ¶ 31). Petitioner brought this action requesting the Court review the underlying record and conclude there is no evidentiary support for the award. (Id. ¶ 49)

Standard of Review of Master Arbitrator

CPLR 7511(b)(1) provides that an arbitration award "shall be vacated on the application of a party who either participated in the arbitration or was served with a notice of intention to arbitrate if the court finds that the rights of that 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 award was by confession or (iii) an arbitrator… 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."

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". (*Mount St. Mary's Hosp. of Niagara Falls v Catherwood,* 26 N.Y.2d 493, 508). This standard has been interpreted to import into Article 75 review of compulsory arbitrations the arbitrary and capricious standard of Article 78 review. (*Matter of Caso v Coffey*, 41 NY2d 153, 158 [1976

Vacatur of a master arbitrator's award is required when the decision was arbitrary or capricious, incorrect as a matter of law, in excess of policy limits, or in conflict with other no-fault arbitration proceedings. (*Matter of Petrofsky v. Allstate Ins. Co.,* 54 N.Y.2d 207, 445 N.Y.S.2d 77, 429 N.E.2d 755 [1981]). Errors involving the weighing of evidence, credibility or timeliness are factual, not legal, and lie beyond CPLR 7511.

11 NYCRR 65-4.5(o)(1) provides that "[t]he arbitrator shall be the judge of the relevance and materiality of the evidence offered, and strict conformity to legal rules of evidence shall not be necessary." Alleged mistakes of fact or law by a lower Arbitrator are generally not reviewable and should not be disturbed. (See *Matter of Falzone (New York Cent. Mut. Fire Ins. Co.),* 15 N.Y.3d 530, 939, [Court of Appeals 2010]).

Evidence of No-Show IME

Petitioner contends that it submitted sufficient proof of nonappearance at the scheduled IME's through two scheduling letters and accompanying affidavits of nonappearance, and that this evidence was legally sufficient under well-established precedent. Specifically, Petitioner relies on *Unitrin Advantage Ins. Co. v Bayshore Physical Therapy, PLLC*, 82 AD3d 559 [1st Dept 2011], which holds that where an assignor fails to appear for duly scheduled IMEs, the insurer may deny all claims retroactively to the date of loss, regardless of the timeliness of the denial.

Petitioner further asserts that because an assignor's failure to attend an IME constitutes a breach of a condition precedent to coverage, the underlying insurance policy is rendered void *ab initio*. As such, Petitioner argues, it cannot be precluded from asserting a lack-of-coverage defense. Petitioner also cites 11 NYCRR 65-3.5(p), which provides that immaterial defects or omissions in a request for verification do not relieve a claimant of the obligation to comply.

However, the Court finds that Petitioner's argument mischaracterizes the basis of the arbitrator's award. Contrary to Petitioner's assertion, the arbitrator did not reject the general legal principle that failure to appear at IMEs may justify denial of benefits. Rather, the arbitrator made a factual finding that Petitioner failed to establish nonappearance in the first instance. In particular, the arbitrator determined that the affidavit offered by Petitioner did not adequately

demonstrate that the assignor failed to appear for the IMEs. That factual determination is supported by the record and is not irrational, nor does it exceed the arbitrator's authority or violate public policy.

Moreover, Petitioner does not meaningfully address the arbitrator's central finding: that there was insufficient evidence to prove that the assignor was properly informed of the IME appointments or failed to attend them. To the extent Petitioner contends that *Unitrin* compels a different result, it is inapposite where, as here, there is a disputed factual issue as to whether the claimant was properly notified and failed to appear. As the arbitrator reasonably concluded, *Unitrin* does not apply in cases where the evidence of nonappearance is inadequate or where there is an indication that the claimant may have been misinformed regarding the IME scheduling. Accordingly, Petitioner has not demonstrated that the Master Arbitrator's decision failed to account for the alleged nonappearance at the IME, nor that the decision was arbitrary or capricious.

Allegations of Corruption and Partiality

Claims of partiality to support vacatur pursuant to CPLR 7511(b) must show that a "reasonable person would have to conclude that an arbitrator was partial to one party to the arbitration" and be supported by "clear and convincing evidence" of bias. (*TCR Sports Broadcasting Holding, LLP v WN Partner, LLC*, 40 NY3d 71, 85-86 [2023]). Petitioner alleges, without further proof, that the arbitrators were partial due to a desire for their own job security and of their colleagues as the American Arbitration Association has undergone massive layoffs years ago due to filings being down. However, Petitioner fails to present credible evidence to support such a claim and as such does not demonstrate corruption or partiality pursuant to CPLR 7511(b).

Conclusion

Because Petitioner has not shown (1) corruption or misconduct, (2) partiality, (3) that either arbitrator exceeded their power, or (4) a failure to follow CPLR Article 75 procedure, the petition must be denied. The hearing arbitrator's findings were factual; and the master arbitrator's affirmance was neither arbitrary nor contrary to substantive law. The court has considered the remaining arguments and finds such unavailing.

Accordingly; it is hereby

ORDERED that the petition of American Transit Insurance Company to vacate the arbitration awards rendered in AAA Case No. 99-24-1339-9582 is denied in its entirety; and it is further

ORDERED that the master-arbitration award of Henry Sawits, Esq. dated October 15, 2024, affirming the award of Jan Chow, Esq. is confirmed in all respects.

The foregoing constitutes the decision and order of the Court.

7/11/2025
DATE

HON. LESLIE A. STROTH
J.S.C.

CHECK ONE:	[X]	CASE DISPOSED		[ ]	NON-FINAL DISPOSITION		
	[ ]	GRANTED	[X] DENIED	[ ]	GRANTED IN PART	[ ]	OTHER
APPLICATION:	[ ]	SETTLE ORDER		[ ]	SUBMIT ORDER		
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