

American Tr. Ins. Co. v Janan Sayyed DC PC

2025 NY Slip Op 33321(U)

September 4, 2025

Supreme Court, New York County

Docket Number: Index No. 654175/2025

Judge: Nicholas W. Moyne

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NICHOLAS W. MOYNE PART 41M

Justice

-----X

AMERICAN TRANSIT INSURANCE COMPANY,

Petitioner,

- v -

JANAN SAYYED DC PC d/b/a ACTIVE CARE
CHIROPRACTIC & NATURAL WELLNESS CENTER a/a/o
JEAN FLOBERT,

Respondent.

-----X

INDEX NO. 654175/2025

MOTION DATE 07/11/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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

Upon the foregoing documents, it is

Petitioner AMERICAN TRANSIT INSURANCE COMPANY (“ATIC”) brought this petition pursuant to CPLR § 7511 seeking to vacate the arbitration awards of Arbitrator Michael Achtziger, Esq. and Master Arbitrator Toby Susan DeSimone, Esq. rendered in favor of the respondent JANAN SAYYED DC PC d/b/a ACTIVE CARE CHIROPRACTIC & NATURAL WELLNESS CENTER a/a/o JEAN FLOBERT (“ACTIVE CARE”). ACTIVE CARE answered the petition and brought counterclaims seeking confirmation of the arbitration awards and attorney’s fees pursuant to 11 NYCRR Section 65-4.10(j)(4). As set forth herein, the petition is denied, and the respondent’s counterclaims are granted.

The crux of the petitioner’s argument is that the arbitration decisions were incorrect as a matter of law. ATIC contends that they properly denied the respondents no-fault claims because the assignor, Jean Flobert (“Flobert”), failed to attend duly scheduled Examinations Under Oath (“EUO”), thereby breaching a condition precedent to coverage. The arbitrator found that ATIC’s defenses were not sustained because they did not demonstrate that there was proof of mailing of the EUO scheduling letters and there was no affidavit of someone with personal knowledge of Flobert’s non-appearance at the EUOs (see NYSCEF Doc. No. 3). To substantiate a no-show defense, an insurer must establish that it mailed the notices to the assignor and that they failed to appear (see *Stephen Fogel Psychological, P.C. v Progressive Cas. Ins. Co.*, 35 AD3d 720, 721 [2d Dept 2006]). An insurer fails to meet this burden when they fail to submit evidence from anyone with personal knowledge of the mailings or of the nonappearances (*Id.*). The Master Arbitrator affirmed the award of the Arbitrator (see NYSCEF Doc. No. 4). In reviewing the documents submitted with the petition reveals neither an affidavit from a person with knowledge of Flobert’s alleged EUO no-show, nor

an affidavit of mailing of the scheduling letters.¹ The awards of the Arbitrator and the Master Arbitrator correctly determined that ATIC did not meet its burden to show that the assignor failed to attend EUOs. Therefore, the awards were correctly rendered. Accordingly, the petition must be denied and the counterclaims granted.

For the reasons stated hereinabove, it is hereby

ORDERED that the petition is DENIED; and it is further

ORDERED that the counterclaims of the respondent are GRANTED; and it is further

ORDERED that the respondent's first counterclaim is GRANTED, and the Arbitration Decision of Michael Achtziger which awarded respondent Two Thousand Seven Hundred Thirty-Six Dollars and Eight-Five Cents (\$2,736.85) together with interest and statutory attorney fees is CONFIRMED; and it is further

ORDERED that the respondent's second counterclaim is GRANTED, and the Master Arbitration Award of Toby Susan DeSimone which affirmed the Arbitration Decision of Michael Achtziger and further awarded respondent Three Hundred Twenty Five Dollars (\$325.00) in additional attorney fees is CONFIRMED; and it is further

ORDERED that the respondent's third counterclaim is GRANTED, to the extent that the court finds that the respondent is entitled to attorney's fees pursuant to 11 NYCRR Section 65-4.10(j)(4); and it is further

ADJUDGED that the awards rendered in favor of respondent and against petitioner are CONFIRMED; and it is further

ORDERED and ADJUDGED that the respondent is to serve a copy of this order with notice of entry upon the Office of the County Clerk, who is directed to enter judgment in favor of respondent, JANAN SAYYED DC PC d/b/a ACTIVE CARE CHIROPRACTIC & NATURAL WELLNESS CENTER a/a/o JEAN FLOBERT, and against petitioner, AMERICAN TRANSIT INSURANCE COMPANY, in the amount of \$3,061.85, plus interest at the rate of 9% per annum from the date of April 23, 2025, and costs and disbursements, as taxed by the Clerk of the Court upon the submission of proper proof thereof, and that respondent have execution therefor; and it is further

ORDERED that plaintiff shall submit judgment directly to the Clerk of the Court, not chambers or the Part, unless otherwise directed by the Clerk of the Court; and it is further

ORDERED that any such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County*

¹ The supporting documents do have a certificates of mailing, but no affidavit.

Clerk Procedures for Electronically Filed Cases (accessible at the “efiling” page on this court's website); and it is further

ORDERED that the issue of respondent’s attorney’s fees incurred in this action is severed and continued; and it is further

ORDERED that a Judicial Hearing Officer (“JHO”) or Special Referee shall be designated to determine the issue of the amount of attorney’s fees the respondent is entitled

and, which is hereby submitted to the JHO/Special Referee for such purpose; and it is further

ORDERED that the powers of the JHO/Special Referee shall not be limited beyond the limitations set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the “References” link), shall assign this matter at the initial appearance to an available JHO/Special Referee to determine as specified above; and it is further


ORDERED that counsel shall immediately consult one another and counsel for respondent shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by e-mail an Information Sheet (accessible at the “References” link on the court’s website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that on the initial appearance in the Special Referees Part the parties shall appear for a pre-hearing conference before the assigned JHO/Special Referee and the date for the hearing shall be fixed at that conference; the parties need not appear at the conference with all witnesses and evidence; and it is further

ORDERED that, except as otherwise directed by the assigned JHO/Special Referee, the trial of the issue specified above shall proceed from day to day until completion and counsel must arrange their schedules and those of their witnesses accordingly; and it is further

ORDERED that counsel shall file memoranda or other documents directed to the assigned JHO/Special Referee in accordance with the Uniform Rules of the Judicial Hearing Officers and the Special Referees (available at the “References” link on the court’s website) by filing same with the New York State Courts Electronic Filing System (see Rule 2 of the Uniform Rules).

This constitutes the decision and order of the court.


20250904193502N01N126ADEC74A9106488588AB7880151E9E78

9/4/2025
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED	<input 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 checked="" type="checkbox"/> REFERENCE
	<input type="checkbox"/>			<input type="checkbox"/>	