

**American Tr. Ins. Co. v Westchester Radiology &  
Imaging, PC**

2025 NY Slip Op 33416(U)

September 11, 2025

Supreme Court, New York County

Docket Number: Index No. 650777/2025

Judge: Phaedra Perry-Bond

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY PART 35

Justice

-----X

AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

WESTCHESTER RADIOLOGY & IMAGING, PC,

Defendant.

-----X

INDEX NO. 650777/2025

MOTION DATE 02/10/2025

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

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

Upon the foregoing documents, it is

BACKGROUND

Petitioner, American Transit Insurance Company (Petitioner) commenced this special proceeding, pursuant to CPLR §7511, Insurance Law 5106 (c) 11 NYCRR 65-4.10(h)(2) to vacate the arbitrators award.

The nature of the dispute is a no-fault action brought pursuant to Insurance Law 5106 and/or 11 NYCRR 65. Respondent rendered medical services to treat injuries sustained by Rebecca Quiles (Ms. Quiles) as a result of a motor vehicle accident that occurred on February 8, 2022. The underlying claims totaled \$2,478.84 for the medical services. Respondent, Westchester Radiology & Imaging, PC (Respondent) is one of the medical providers that rendered treatment to Ms. Quiles for the injuries she sustained. Ms. Quiles assigned the right to collect no-fault benefits to the Respondent in exchange for the medical treatment received.

Respondent is a sole proprietor, a partnership, a domestic and foreign corporation authorized to conduct business in New York State.

Petitioner is an insurance company licensed to transact business in New York State.

Petitioner argues that the claims submitted for dates of service 4/19/22-6/22/22 were not paid by Petitioner because the claimant failed to appear for an examination under oath and because the services were not medically necessary as per a peer review of Dr. Ajendra Sohal.

The Respondent initiated arbitration for the payment of the \$2,701.12 for the services provided from 4/19/22-6/22/22.

The matter was set for a hearing before the arbitrator Kent Benziger on June 3, 2024. Arbitrator Benziger rendered an award for \$2,478.84 in favor of the Respondent.

The Petitioner filed for a review by a Master Arbitrator. On October 12, 2024, Master Arbitrator Sawits rendered a decision upholding Arbitrator Benziger's award.

Petitioner now moves to vacate the Award and Decision of the arbitrator and the master arbitrator. Specifically, Petitioner argues that the lower Arbitrator exceeded the powers of an arbitrator by failing to follow well settled law in rendering the decision and likewise, the master arbitrator exceeded the powers of a master arbitrator by failing to vacate an arbitration award that was contrary to well settled caselaw.

### LEGAL DISCUSSION

The standard of review in Article 75 proceedings depends on the amount awarded by the arbitrator. "Judicial review' of a master arbitrator's award is limited to the grounds set forth in CPLR article 75 unless the award is \$5,000 or more, in which case the entire dispute is subject to a 'plenary judicial adjudication', something very different from judicial review of some other entity's determination." (*Matter of Greenberg*, 70 N.Y.2d 573, 577, 517 N.E.2d 879, 523 N.Y.S.2d 67 (1987)). Accordingly, when an arbitration award, less the attorney's fees and interest, exceeds

\$5,000.00, the petitioner is entitled to de novo review by the judiciary. In the present case, the award does not exceed the \$5,000.00 limit. As such, the Court is bound by the factual determinations of the arbitrators and review of the motion to vacate the award is limited to the bases enumerated in CPLR § 7511.

Where the amount in contention does not exceed \$5,000.00, courts grant deference to the findings of the arbitrators. "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.' 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 Petrofsky [Allstate Ins. Co.]*, 54 NY2d 207, 211 [1981], quoting *Mount St. Mary's Hosp. of Niagara Falls v Catherwood*, 26 NY2d 493, 508 [1970]).

Thus, if the amount petitioner is seeking is less than the statutory amount, the judiciary is restricted by the findings of the arbitrators. Only when review has basis in an enumerated ground in CPLR § 7511 or the court finds that the arbitration award is a result of arbitrary or capricious determinations by the arbitrators may the court interject.

"[A] court may vacate an arbitration award only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power." (*Matter of Falzone [New York Cent. Mut. Fire Ins. Co.]*, 15 NY3d 530, 534 [2010]; see CPLR 7511[b]). Per CPLR § 7511(b), a party may seek to vacate the arbitrator's award on the grounds 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 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 was not made; or

(iv) failure to follow the procedure of this article [Article 75], unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection." CPLR § 7511(b).

"Further, 'a court is bound by the arbitrator's factual findings and interpretations of the contract,' and it 'cannot examine the merits of an arbitration award and substitute its judgment for that of the arbitrator simply because it believes its interpretation would be the better one.' The 'arbitrator's award will not be vacated for errors of law and fact committed by the arbitrator and the courts should not assume the role of overseers to mold the award to conform to their sense of justice.'" (*Metro. Transp. Auth. v Westfield Fulton Ctr., LLC*, 228 AD3d 435, 435 [1st Dept 2024] [internal quotation marks and citation omitted]).

Judicial review of a master arbitrator's award "is restricted, by the terms of the statute, to 'the grounds for review set forth in article seventy-five' of the CPLR (except in those cases where the award is \$ 5,000 or more, and the applicant or insurer may seek de novo review in the courts)." (*Petrofsky*, 54 NY2d at 210, citing *Matter of Bamond v Nationwide Mut. Ins. Co.*, 75 AD2d 812 [2d Dept 1980], *affd* 52 NY2d 957 [1981]). CPLR §7511 allows a court to vacate an arbitrator's award and, by judicial construction, a master arbitrator's award on the application of either party if "the court finds that the rights of that party were prejudiced by: \* \* \* (iii) an arbitrator, or agency or person making the award exceeded his power or \* \* \* that a final and definite award upon the subject matter submitted was not made." (CPLR §7511, [b], par 1, cl [iii].) (*Petrofsky*, 54 NY2d at 211).

The question presented to this Court is whether the arbitrator exceed the powers of an arbitrator by failing to follow well settled law in rendering the decision and likewise, the master arbitrator exceeded the powers of a master arbitrator by failing to vacate an arbitration award that was contrary to well settled caselaw.

This Court disagrees that the arbitrator or the master arbitrator exceeded their authority. The arbitrator issued the Award after diligent review and consideration of the parties' evidence, as well as the parties' oral arguments and any testimony presented. Similarly, Petitioner failed to demonstrate the existence of any of the statutory grounds for vacating the master arbitrator's award. In addition, the determination of the master arbitrator confirming the original arbitration award had evidentiary support and a rational basis (see *Matter of Smith [Firemen's Ins. Co.]*, 55 NY2d 224, 231–232 [1982]; *Petrofsky*, 54 NY2d at 211; *Matter of Fireman's Fund Ins. Co. v Allstate Ins. Co.*, 46 AD3d 560, 561 [2d Dept 2007]). "It is not for [the court] to decide whether [the master] arbitrator erred [in applying the applicable law]" (*Matter of Falzone [New York Cent. Mut. Fire Ins. Co.]*, 15 NY3d 530, 535, 939 NE2d 1197, 914 NYS2d 67 [2010]).

The master arbitrator considered whether the evidence presented to the arbitrator was sufficient, as a matter of law, to support the determination by the arbitrator. Therefore, Petitioner's argument is unconvincing. To the extent that Petitioner argues that failure to appear for the EUOs was persevered in their master appeal review and therefore should be considered part of the instant motion, this Court disagrees. Arbitrator Benziger noted that in a prior Arbitration, Arbitrator Schor considered the same defense and rejected its application and also made reference to six other cases in which the same defense was rejected. Arbitrator Benziger also made his own evaluation and stated in his award:

"I also agree on the basis of the records before me that the Respondent has continued to fail to support the EUO no-show defense."

Moreover, Arbitrator Benziger discussed the peer report of Ajendra S. Sohal, M.D., and did not believe the peer review met the carrier's burden to prove lack of medical necessity for the testing.

Master Arbitrator Sawits concluded that each of Arbitrator Benziger's findings of fact and conclusions had a rational basis.

Because none of the grounds for vacating an award, as enumerated in CPLR §7511(b), are present in the record, and the hearing arbitrator, as affirmed by the master arbitrator, provided at least "a colorable justification for the outcome reached," this Court must deny the petition to vacate the arbitration award (*Wien & Malkin LLP v Helmsley-Spear, Inc.*, 6 NY3d 471, 479 [2006]).

#### ATTORNEY FEES

Pursuant to 11 NYCRR 65-4.10(j)(4): "[t]he attorney's fee for services rendered in connection with a court adjudication of a dispute de novo, as provided in section 5106(c) of the Insurance Law, or in a court appeal from a master arbitration award and any further appeals, shall be fixed by the court adjudicating the matter." Here, respondent is entitled to attorneys' fees for its work in Supreme Court in opposing the petition to vacate the arbitration award and moving to reargue the court's order (*Matter of Country-Wide Ins. Co. v TC Acupuncture P.C.*, 179 AD3d 414, 414-415, 113 NYS3d 534 [1st Dept. 2020]; *Matter of Country-Wide Ins. Co. v Bay Needle Care Acupuncture, P.C.*, 220 AD3d 461, 462, 197 N.Y.S.3d 202 [1st Dept 2023]; 11 NYCRR 65-4.10[j][4]). . "The term 'court appeal' applies to a proceeding taken pursuant to CPLR article 75 to vacate or confirm a master arbitration award." *Country-Wide Ins.*, 113 NYS3d (1st Dept. 2020). Respondent is therefore entitled to attorneys' fees in connection with opposing petitions to vacate arbitration brought before this Court. See *Am. Transit Ins. Co. v Rutland Med. PC*, 205 N.Y.S.3d 79 (1st Dept. 2024).

#### CONCLUSION

Accordingly, it is hereby

ORDERED that the petition of American Transit Insurance Company to vacate the arbitration awards of Kent Benziger, Esq., is denied in its entirety; and it is further

ORDERED that the master-arbitration award of Henry Sawits, Esq., affirming the award of the arbitrator, Kent Benziger, Esq., is confirmed in all respects, it is further

ORDERED that Respondent is to file, and mail a courtesy copy to the Part 35 email: (1) an attorney affirmation detailing the efforts made by Respondent in connection with this special proceeding; (2) Respondent's underlying billing entries, subject to redactions as is appropriate, such that the Court may assess the reasonableness of the attorneys' fees; and (3) a proposed order thereto.

The foregoing constitutes the decision and order of the Court.

9/11/25  
DATE

  
PHAEDRA PERRY-BOND, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE