

**American Tr. Ins. Co. v Spruce Med. & Diagnostic,
P.C.**

2025 NY Slip Op 33823(U)

September 22, 2025

Supreme Court, Kings County

Docket Number: Index No. 514964/2022

Judge: Lisa S. Ottley

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS - PART 24

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AMERICAN TRANSIT INSURANCE COMPANY,

Mot. Seq. # 13 and 15

Plaintiff,

Index # 514964/2022

-against-

DECISION AND ORDER

SPRUCE MEDICAL & DIAGNOSTIC, P.C., a/a/o
MUHUMMAD A. CHAUDHRY,

Defendant.

HON. LISA S. OTTLEY, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Notice of Motion to Confirm Arbitrator’s Award Cross-Motion for Summary Judgment submitted December 9, 2024.

Papers	Numbered
Notice of Motion & Affirmation.....	1&2 [Exh. A-E]
Notice of Cross-Motion & Affirmation/Affidavits.....	4&5; 6 and 7 [Exh. A-B]
Memorandum of Law in Reply to Motion and in Opposition to Cross-Motion.....	8 [Exh. A-B]
Reply Memorandum.....	3 [Exh. A-D]

Plaintiff, American Transit Insurance Company, commenced this action pursuant to Insurance Law 5106(c) and 11 NYCRR 65-4.10(h)(1)(ii) to seek de novo review of an arbitral award issued by a master arbitrator. The master arbitrator award was in favor of the defendant in the amount of \$8,349.59. Defendant moves pursuant to CPLR 3212(b) for an order confirming the master arbitration award that affirmed the lower arbitration award and for attorney’s fees, costs and disbursements. Plaintiff cross-moves for an order pursuant to CPLR 3212 granting summary judgment in plaintiff’s favor on the grounds that the defendant failed to comply with its verification request and failure to address plaintiff’s workers compensation defense. Defendant opposes plaintiff’s motion for summary judgment on the grounds that the billing was never properly tolled nor denied, and issues of fact preclude summary judgment from being granted.

First, a de novo action which seeks to address disputed no-fault insurance invoices must be litigated as though the arbitration hearing and the master arbitration never took place. In fact, the determinations of the arbitrators are irrelevant. The court’s jurisdictional basis is that the monetary result of the arbitration is provided based on the monetary result of the arbitration, which is a minimum award of \$5,000.00. As indicated above, the amount

of the award in this matter exceeded the minimum award. See, Matter of Greenberg [Ryder Truck Rental], 70 N.Y.2d 573, 523 N.Y.S.2d 67 (1987); Matter of Acuhealth Acupuncture, P.C. v. Country-Wide Ins. Co., 176 A.D.3d 800, 112 N.Y.S.3d 767 (2nd Dept., 2019); Matter of Capuano v. Allstate Insurance Co., 122 A.D.2d 138, 504 N.Y.S.2d 523 (2nd Dept., 1986).

Since this dispute was initially submitted to the American Arbitration Association, the plaintiff had ninety (90) days from the date the master arbitrator's award was mailed to it to commence a trial de novo. See, Insurance Law 5106(c); CPLR 7511; 11 NYCRR 65-4.10[h][2]. The plaintiff timely invoked its right to a de novo review by the Supreme Court pursuant to the applicable law, which allows for review of an arbitral award issued by a master arbitrator. See, AutoOne Insurance Co. v. Eastern Island Medical Care, P.C., 141 A.D.3d 499, 35 N.Y.S.3d 230 (2nd Dept., 2016), which held as follows: "The plaintiff exhausted its demand for review by a master arbitrator, and the master arbitrator issued an award which was final and binding **except**, as is relevant here, where a party commences a court action to adjudicate the dispute de novo when the award is \$5,000 or more (see, 11 NYCRR 65-4.10[h][1])." [*Emphasis added*]

Summary Judgment

It is well settled that to grant summary judgment, it must clearly appear that no material issue of fact has been presented. See, Grassick v. Hicksville Union Free School District, 231 A.D.2d 604, 647 N.Y.S.2d 973 (2nd Dept., 1996). "Where the moving party has demonstrated its entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring the trial of the action." See, Zuckerman v. City of New York, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980). The papers submitted in the context of the summary judgment motion are viewed in the light most favorable to the party opposing the motion. See, Marine Midland Bank, N.A. v. Dino v. Artie's Automatic Transmission Co., 168 A.D.2d 610 (2nd Dept., 1990). If the *prima facie* showing has been met, the burden then shifts to the opposing party to present sufficient evidence to establish the existence of material issues of fact requiring a trial. See, CPLR 3212[b]; Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986).

The parties' attorneys have been litigating aggressively and are no strangers to the arguments raised herein and throughout the cases which have been appearing before this court. One argument that continues to be raised by plaintiff is the defendant's failure to comply with CPLR's basic requirement when moving for summary judgment since defendant does not annex an affirmation or affidavit from a person with personal knowledge of the facts, which it argues is insufficient to establish a claim on the merits. Here, as in other motions that are pending or have been decided by this Court, the defendant's motion for summary judgment confirming the arbitration award and opposition to plaintiff's motion for summary judgment is supported by an attorney affirmation only.

The defendant's attorney's affirmation which lacks probative value and does not provide documentary evidence in support of its opposition, fails to raise a material issue of fact and is insufficient to defeat plaintiff's motion for summary judgment. See, Zuckerman v. City of New York, supra; Pryhuber v. Maffucci Storage Corp., 170 A.D.2d 660, 567 N.Y.S.2d 81

(2nd Dept. 1991). Specifically, although the defendant's attorney argues that it is entitled to summary judgment on the evidence since the billing was never properly tolled nor denied, the attorney did not attest to personally mailing the NF-3 claim form (bill) or to receiving an appurtenant verification request and/or NF-10 denial. Therefore, the defendant failed to establish that he had personal knowledge to authenticate the first step, which is that the bills were submitted to the plaintiff. See, American Transit Company v. Advanced Orthopaedics PLLC, 86 Misc.3d 1234(A), 234 N.Y.S.3d 928 (Sup. Ct., Kings Co., 2025).

Based upon the foregoing, the court hereby denies the defendant's motion for summary judgment which seeks to confirm the master arbitration award.

Next, this court will address the plaintiff's cross-motion for summary judgment which argues that it should be granted summary judgment due to defendant's failure to comply with its verification request, failure to address the worker's compensation defense and the unavailability of confirmation of the arbitration award. Defendant argues that the plaintiff's supporting affidavits as to the receipt of the bill and verification requests are insufficient to establish plaintiff's prima facie entitlement to summary judgment. Specifically, defendant argues that plaintiff's affidavits are incorrectly captioned and should not be considered by this court. The court finds defendant's argument as to the incorrect caption on the affidavit (the name of the defendant, appearing as the plaintiff and the plaintiff appearing as the defendant herein) unavailing and not prejudicial to a substantial right of the defendant. The affidavit of Ms. Vega, a claims examiner for plaintiff, sets forth the practice and procedure for receipt of the bill, processing and mailing verification requests. In addition, the plaintiff annexes documentary proof of the verification requests [Exh. A]. Furthermore, as pointed out by the plaintiff, the defendant's attorney acknowledged that a verification request for color photos was received but fails to provide documentary evidence as to compliance with the request.

When a health care provider, as assignee of no-fault claimant fails to respond to a verification request, including any follow-up request, the 30-day period in which to pay or deny the claim does not begin to run, and any claim for payment is premature. See, Westchester County Med. Ctr. v. New York Cent. Mut. Fire Ins. Co., 262 A.D.2d 553, 692 N.Y.S.2d 665 (2nd Dept., 1999). According to the affidavit of the claim's examiner assigned to the claim, Jennifer Vega, a claim for \$8,349.59 was received on June 10, 2019, and issued a verification request on July 2, 2019, and a second request on August 6, 2019. On September 12, 2019, Ms. Vega sent correspondence to the applicant, claimant and the claimant's attorney based on the partial verification received [Exh. B], regarding the intra-operative color photos and reports, that she states were still outstanding as of February 14, 2020.

A plaintiff applicant has a duty to respond to a proper and timely verification request from a defendant insurer, even where a plaintiff anticipates it will be unable to fully satisfy the insurer's request or the request is unintelligible (see Westchester County Med. Ctr. v. New York Cent. Mut. Fire Ins. Co., 262 A.D.2d 553, 692 N.Y.S.2d 665 [2nd Dept. 1999]). Also, any additional verification sought from plaintiff's assignor, can be sought from plaintiff's assignee, as an assignee stands in the shoes of the assignor (see Arena Constr. Co. v. Sackaris

& Sons, 282 A.D.2d 489, 722 N.Y.S.2d 884 [2nd Dept. 2001]). Here, the defendant partially complied with the verification.

In addition, there is the issue of whether the claimant was injured in the course of his employment at the time of the motor vehicle accident. The claims must be referred to the Workers' Compensation Board for a determination as to whether the claimants have a valid cause of action to recover no-fault benefits, or whether they are relegated to benefits under the Workers' Compensation Law. See, LMK Psychological Service, P.C. v. American Transit Ins. Co., 64 A.D.3d 752, 882 N.Y.S.2d 719 (2nd Dept., 2009).

Based upon the foregoing, the court finds that there are issues of fact which preclude summary judgment from being granted in favor of plaintiff, and it is hereby


ORDERED that defendant's motion for confirmation of the master arbitration award, attorney's fees, costs and disbursement is hereby denied in its entirety, and it is further

ORDERED that plaintiff's cross-motion for summary judgment is denied.

There are issues of fact which preclude summary judgment from being granted.

This constitutes the decision and order of this Court.

Dated: Brooklyn, New York
September 22, 2025



HON. LISA S. OTTLEY, J.S.C.
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