

American Tr. Ins. Co. v Safer Pharm. Inc.

2025 NY Slip Op 33900(U)

October 10, 2025

Supreme Court, New York County

Docket Number: Index No. 652208/2025

Judge: Alexander M. Tisch

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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. ALEXANDER M. TISCH PART 18

Justice

-----X
AMERICAN TRANSIT INSURANCE COMPANY,
Petitioner,
- v -
SAFER PHARMACY INC., A/A/O OMEAR BURNETT,
Respondent.
-----X

INDEX NO. 652208/2025
MOTION DATE 04/23/2025
MOTION SEQ. NO. 001/002

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-17 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents, petitioner American Transit Insurance Company (American Transit) moves, pursuant to CPLR 7511, to vacate the arbitration awards issued by Arbitrator James Skelton Esq. and Master Arbitrator Steven Rickman, Esq. (American Arbitration Association [AAA] Case No. 17-23-1309-4634 and AAA Assessment No. 99-23-1309-4634). Respondent cross-moves by petition for attorney’s fees pursuant to 11 NYCRR 65-4.10(j)(4) and costs pursuant to CPLR 8202.

According to the petition, the assignor was involved in a motor vehicle accident on May 2, 2023, and sustained injuries (NY St Cts Elec Filing [NYSCEF] Doc No. 1, Petition). The assignor allegedly assigned Safer Pharmacy the right to collect no-fault benefits for medical treatment the assignor received for their injuries (NYSCEF Doc No. 1, Petition). American Transit denied Safer Pharmacy’s claims totaling \$4,248.00 for services rendered on May 18, 2023 (NYSCEF Doc No. 1, Petition). Safer Pharmacy initiated arbitration with American Transit for its denial of the no-fault benefits claims (NYSCEF Doc No. 3, Exhibit A to Petition, Arbitration Award).

In AAA Case No. 17-23-1309-4634 (Lower Arbitration), Arbitrator Skelton reviewed a bill, of which American Transit didn't pay claiming that there is outstanding verification (NYSCEF Doc No. 3, Exhibit A to Petition, Arbitration Award). Arbitrator Skelton determined American Transit must reimburse Safer Pharmacy for medical services rendered on May 18, 2023, and awarded \$4,248.00 to Safer Pharmacy (NYSCEF Doc No. 3, Arbitration Award). In AAA Assessment No. 99-23-1309-4634 (Master Arbitration), Master Arbitrator Rickman affirmed the Lower Arbitration in its entirety (NYSCEF Doc No. 4, Exhibit B to Petition, Master Arbitration Award). Petitioner American Transit moves to vacate the Lower and Master Arbitration Awards pursuant to CPLR 7511.

American Transit contends that failure to follow well-settled law is grounds to vacate the arbitration award pursuant to CPLR 7511 (b)(1) (i)-(iii). American Transit alleges Arbitrator Skelton exceeded the powers of an arbitrator by failing to follow well-settled law in rendering the decision. American Transit also alleges Master Arbitrator Rickman exceeded the powers of a master arbitrator by failing to vacate an arbitration award that was contrary to well-settled law.

“Within 30 calendar days after receipt of the proof of claim for no-fault benefits, an insurer can either pay the claim, in whole or in part, deny it, or seek verification of it.” (*Sound Shore Med. Ctr. v New York Cent. Mut. Fire Ins. Co.*, 106 AD3d 157, 162 [2d Dept 2013] [internal citations omitted]). “Failure to pay benefits within the 30-day requirement renders the benefits overdue. The 30-day period may be extended if within 10 days from receipt of a completed application, an insurer demands additional verification of a claim. If the requested verification has not been supplied to the insurer within 30 days from the insurer's original request, the insurer shall issue a follow-up request within 10 days of the insured's failure to respond” (*Mount Sinai Hosp. v Chubb Group of Ins. Companies*, 43 AD3d 889, 889-90 [2d Dept

2007] [internal citations omitted]). “[W]hen a no-fault medical service provider fails to respond to the requests for verification, the 30 days in which to pay or deny the claim is tolled and does not begin to run. Accordingly, any claim for payment by the medical service provider after two timely requests for verification...is premature” (*Sound Shore Med. Ctr*, 106 AD3d 157, 163 [2d Dept 2013] [internal citations omitted]). When an insurer argues the claim for payment is premature, the insurer must demonstrate “(1) that verification requests were timely mailed and (2) that the defendant did not receive the requested verification” (*Is. Life Chiropractic, P.C. v Travelers Ins. Co.*, 64 Misc 3d 143(A) [App Term 2019]).

American Transit alleges it requested verification for all claims for medical services rendered by Safer Pharmacy from May 18, 2023, and Safer Pharmacy failed to respond. Accordingly, American Transit contends the 30 days in which it must pay or deny Safer Pharmacy’s claims are tolled and American Transit does not owe Safer Pharmacy no-fault benefits. American Transit argues Arbitrator Skelton failed to properly apply well settled law by finding American Transit did not toll the 30 days which it must pay or deny Safer Pharmacy’s claims and awarding the claims to Safer Pharmacy.

Here, Arbitrator Skelton found American Transit did not provide sufficient proof of timely mailing the requests for additional verification to Safer Pharmacy. Arbitrator Skelton found “there is no proof when Respondent received the claim; and there is no proof of mailing of any of the RAV in evidence; and there is no affidavit or affirmation by a person with knowledge stating that no responses have been received” (NYSCEF Doc No. 3, Arbitration Award) and as such, the 30 days in which American Transit was to pay or deny the claims was not tolled.

Arbitrator Skelton did not misapply well-settled law nor exceed an arbitrator’s power. Insofar as the lower arbitration was not contrary to well-settled law, Master Arbitrator Rickman

did not fail to vacate an arbitration award that was contrary to well-settled law or exceed the powers of a master arbitrator. This Court has considered petitioner's other arguments and finds them to be without merit. This Court finds there are no grounds to vacate the arbitration awards and therefore confirms the arbitration awards pursuant to CPLR 7511 (e).

Respondent moves by cross-petition for attorney's fees pursuant to 11 NYCRR 65-4.10(j)(4) in the amount of \$600.00 and costs pursuant to CPLR 8202 in the amount of \$100.00 (NYSCEF Doc Nos. 12 and 13). 11 NYCRR 65-4.10(j)(4) provides for mandatory attorney fees in connection with court appeals from a master arbitration award and sets forth that it "shall be fixed by the court adjudicating the matter. *see In the Matter of Countywide Insurance Company v Bay Needle Acupuncture, PC*, 162 AD3d 407 [1st Dept 2018]. Respondent asserts that one hour and thirty minutes was spent by counsel preparing its opposition and cross-petition at a billable rate of \$400.00 an hour (NYSCEF Doc Nos. 15 and 16). Petitioner contends in opposition that respondent's demands are excessive and that pursuant to 11 NYCRR 65-4.6(c) no-fault attorneys are limited entitled to a fee of up to \$70.00 an hour, subject to a maximum fee of \$1,400.00. Petitioner also asserts that the time respondent counsel spent preparing opposition to the petition and the cross-petition is excessive. However, the 65-4.6(c) attorney fee limitations are not applicable here as 65-4.10(j)(4) governs court appeals from a master arbitration award. Therefore, the Court orders that costs are awarded in the amount of \$100.00 and reasonable attorney's fees are awarded in the amount of \$200.00 an hour for a total amount of \$300.00 reflective of one hour and thirty minutes of work.

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition (Motion Sequence No. 001) is DENIED, and the arbitration awards (AAA Case No. 17-23-1309-4634 and AAA Assessment No. 99-23-1309-4634) rendered in favor of Safer Pharmacy, Inc. are confirmed; and it is further

ORDERED AND ADJUDGED that the cross-petition is GRANTED to the extent that costs are awarded in the amount of \$100.00 and attorney's fees in the amount of \$300.00; and it is further

ORDRED and ADJUDGED that the Clerk is directed to enter judgment in favor of respondent dismissing this action.

This constitutes the decision and order of the Court.

10/10/2025

DATE



ALEXANDER M. TISCH 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