SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. KATHLEEN WATERMAN-MARSHALL** **PART** **31M**

Justice

----------X

AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

PROVISTA MED INC AND SANFORD RADIOLOGY PC,

Defendant.

----------X

INDEX NO. 651644/2025

MOTION DATE 03/25/2025

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, 27, 28

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

Upon the foregoing documents, the motion by American Transit Insurance Co. ("American Transit") to vacate a master arbitration no-fault award dated January 5, 2025 is denied. Upon the same record, the cross-motion by Provista Med Inc ("Provbista") and Sanford Radiology PC ("Sanford") to confirm the master arbitration award, and for their costs and attorney's fees, is granted.

Background

American Transit insured Ysabel Pujols, who was involved in a motor-vehicle accident on May 8, 2023. As a result of the accident, Ms. Pujols sought medical treatment with Provista Provista and Sanford (collectively, "Medical Providers") and assigned her receipt of no-fault benefits for these services to the Medical Providers. Sanford conducted imaging studies of Ms. Pujols, and Provista provided durable medical equipment.

First Arbitration Award

The Medical Providers submitted no-fault claims to American Transit totaling $4,263.08. American Transit denied Provista's claim, contending that the services provided were not medically warranted ("Medical Necessity Defense"). American Transit neither paid nor denied Sanford's claim, contending that it had requested additional verification of the claim ("Verification Defense"). The Medical Providers then sought to recover for their services via no-fault arbitration. On the eve of the arbitration hearing, American Transit submitted papers in support of its Verification Defense. The arbitrator did not consider these untimely papers, filed on the eve of the arbitration hearing, and the arbitrator issued an award in favor of the Medical Providers for $3,941.45.

First Master Arbitration Award

American Transit appealed the arbitrator's award via master arbitration proceedings, contending that the arbitrator: 1. failed to consider its untimely submission of its Verification Defense papers regarding the Sanford claim; and 2. improperly found American Transit's denial of the Provista claim untimely despite a stipulation that the denial was timely issued. The master

arbitrator rejected American Transit's argument that the arbitrator improperly precluded its late submission and affirmed the award in favor of Sanford. However, the master arbitration, in "an exercise of excessive caution," remanded the matter back to the arbitrator to clarify a possible inconsistency as the arbitrator "memorialized a stipulation between the parties regarding the timeliness of the Provista denial, but nonetheless precluded the insurer's medical necessity defense". Notably, the remand was solely as to Provista's claim, the master arbitrator affirmed the award in favor of Sanford.

Second Arbitration Award – Provista Med Only

Upon remand, the arbitrator clarified that it further reviewed its notes and found it was mistaken – the parties had never stipulated that American Transit's denials were timely. Accordingly, the arbitrator determined in the absence of an agreement by the parties, American Transit had not submitted proof or persuasive argument that its denial was timely, and the arbitrator found American Transit's denial of Provista's claim based upon Medical Necessity defense to be untimely. The arbitrator therefore found in favor of Provista.

Second Master Arbitration Award – Provista Med Only

American Transit then appealed the arbitrator's second decision to the master. Despite that the matter was remanded solely as to Provista's claim, American Transit's second appeal focused solely on the Sanford claim, which had already been affirmed by the master arbitrator's first appeal. The master arbitrator noted:

> Curiously, [American Transit] has not addressed, let alone challenged, disposition of its medical necessity defense which, parenthetically, the forum notes it raised exclusively in response to the Provista claim (the only claim remanded), but rather focused exclusively on the Sanford claim, the disposition of which, as hereinabove noted, was affirmed in the initial appeal and may not be revisited absent the timely initiation of a Special Proceeding under Article 75 of the CPLR.

The master arbitrator then affirmed the arbitration award in favor of Provista in its entirety.

Article 75 Special Proceeding

American Transit then filed the instant Article 75 special proceeding challenging the first arbitration award and first master arbitration award (*see* NYSCEF Doc. No. 3 & 4). Notably, American Transit provided only the first arbitration award and first master arbitration award; it did not provide the second arbitration award issued after remand or the second master arbitration award confirming the remanded award. The failure to provide the second arbitration award and second master arbitration award – which directly resolved the issues raised in this Article 75 proceeding – would ordinarily require denial of American Transit's petition, as American Transit has not provided the awards it actually seeks to challenge. However, the Medical Providers have submitted the second arbitration award and second master arbitration award on their cross-motion to confirm the awards. Consequently, the Court reaches the merits of the petition and cross-motion as though the proper arbitration awards had been submitted on the petition.

American Transit contends that the arbitration award in favor of Sanford was marred by an error of law because it was premature. It contends that it had not paid Sanford's underlying claim

because it was in the process of verifying the claim. American Transit contends that under 11 NYCRR § 65-3.5(b) it is entitled to require Sanford to verify its claim, and that payments are not due while the verification process unfolds, pursuant to 11 NYCRR § 65-3.8(b)(1). It further contends that any delay by Sanford to verify the claim tolls American Transit's time to pay the claim. Thus, American Transit contends that Sanford's submission of the claim to arbitration was premature, and the arbitrator should have dismissed the arbitration or found American Transit properly denied the claim due to its Verification Defense. American Transit contends that the Master Arbitrator should have corrected this error in accordance with *Matter of Petrofsky* (54 NY2d 207 [1981]), and that this Court should now correct the mistake of law in the Arbitrator's and Master Arbitrator's awards under *Matter of Petrofsky*.

Medical Providers contend that American Transit is, effectively, seeking *de novo* review of the Arbitration and Master Arbitration Awards, which is not available because the award does not exceed $5,000.00 (Insurance Law § 5106[c]; 11 NYCRR 65-4.10[h][2]). They contend that this Court's review of the arbitration awards is limited to the grounds set forth in CPLR § 7511 (corruption/fraud; partiality; excess of power; failure to follow Article 75 procedures; or violative of public policy) or as arbitrary and capricious. Medical Providers further contend that the arbitration awards need only be based upon some evidence to be confirmed, that the arbitration awards are supported by the evidence, and the awards neither represent an error of law nor fact. Provista contends that American Transit failed to meet its burden during the arbitration to establish that it timely denied the claim based upon lack of medical necessity, and Sanford contends that the arbitrator properly rejected American Transit's untimely submission regarding its Verification Defense. As such, Medical Providers contend that the arbitrator properly found American Transit did not meet its burden to establish it timely denied or failed to pay their claims. They seek their costs and attorney's fees, including statutory attorney's fees of 20% of the award amount (11 NYCRR 65-4.6[b]) for work performed during the underlying arbitration and additional attorney's fees on an hourly basis for the work performed in this special proceeding (11 NYCRR § 65-4.10[j][4]).

Discussion

CPLR § 7511 provides that a party may seek to vacate an arbitration award due to: (i) corruption or fraud, (ii) partiality of the arbitrator, (iii) an arbitrator acting in excess of their authority or imperfectly executing their authority such that the final award did not address the subject of the arbitration proceedings, or (iv) by the arbitrator's failure to follow the procedures of Article 75 of the CPLR. Likewise, where a strong public policy is violated by the award or the award is irrational, vacatur is proper (*In Re Falzone [New York Cent. Mut. Fire Ins. Co.]*, 15 NY3d 530 [2010]). Where the parties have submitted to "compulsory arbitration involving no-fault insurance, the standard of review is whether the award is supported by evidence or other basis in reason" (*Matter of Miller v Elrac LLC*, 170 AD3d 436 [1st Dept 2019]). This standard is interpretated to mean whether the arbitrator's decision is rational and not arbitrary or capricious (*id*.). However, the petition to vacate the arbitration award must be filed within 90-days of delivery of the award.

"Consistent with the public policy in favor or arbitration, the grounds specified in CPLR 7511 for vacating or modifying a no-fault arbitration award are few in number and narrowly applied" (*Matter of Mercery Cas. Co. v Healthmakers Med. Group, P.C.*, 67 AD3d 1017 [2d Dept 2009]). "Courts are reluctant to disturb the decisions of arbitrators lest the value of this method of resolving controversies be undermined" (*Goldfinger v Lisker*, 68 NY2d 225 [1986]; *see also Geneseo Police Benevolent Assn. v Village of Geneseo*, 91 AD2d 858 [4th Dept 1982] *aff'd* 59 NY2d 726 [1983]). Consequently, errors of law or fact do not form a basis to vacate an arbitrator's award (*Wien &*

Malkin LLP v Helmsley-Spear, Inc., 6 NY3d 471 [2006]; *Transport Workers' Union of Am., Local 100, AFL-CIO*, 6 NY3d 332 [2005]). "An arbitration award must be upheld when the arbitrator offer[s] even a barely colorable justification for the outcome reached" (*Susan D. Settenbrino, P.C. v Barroga-Hayes*, 89 AD3d 1094 [2d Dept 2011] quoting *Wien & Malkin LLP v Helmsley-Spear, Inc.*, 6 NY3d at 479 [internal quotation removed]). Simply put, it is well established that an arbitrator's award is largely unreviewable by this Court (*In re Falzone*, 15 NY3d at 534).

Vacatur of the arbitration and master arbitration awards is denied. Contrary to American Transit's contention, neither *Matter of Petrofsky* nor *Matter of Miller v Elrac, LLC* provide that the court may review the arbitration award for errors of law, but rather provide that the *master arbitrator* may correct errors of law during its review (54 NY2d 207 [1981]; 170 AD3d 436 [1st Dept 2019]). "Although compulsory arbitration awards are subject to a broader scope of review than awards resulting from consensual arbitration, the scope of judicial review of such an arbitration award is still limited to whether the award is supported by the evidence or other basis in reason as appears in the record" (*Matter of Miller*, 170 AD3d at 437; *see also Mount St. Mary's Hosp. of Niagara Falls v Catherwood*, 26 NY2d 493 [1970]). It is well established that errors of law or fact by an arbitrator do not form a basis for the Court to vacate an arbitration award (*Wien & Malkin LLP*, 6 NY3d at 479; *Transport Workers' Union of Am., Local 100, AFL-CIO*, 6 NY3d 332; *Motor Vehicle Acc. Indemnification Corp. v Aetna Casualty & Surety Co.*, 89 NY2d 214, 223 [1996]; *Steyn v CRTV, LLC*, 175 AD3d 1 [1st Dept 2019]; *Merrill Lynch, Pierce, Fenner & Smith Inc. v Graef*, 34 AD3d 220 [1st Dept 2006]). Consequently, the Court denies vacatur of any of the arbitration awards or master arbitration awards on the basis that the awards were flawed by an error of law.

Assuming, *arguendo*, that it was proper for the Court to reach the issue of mistake of law, as American Transit contends, it would find no mistake occurred. The parties argued the issues of the timeliness of American Transit's denial of Provista's claim under the Medical Necessity Defense as well as American Transit's late submission of its Verification Defense to the arbitrator, who, after weighing the evidence, resolved both issues in the arbitration award. The arbitrator found that American Transit's Medical Necessity Defense was precluded as it did not timely issue the denial of Provista's claim. The arbitrator found that American Transit's Verification Defense, which was filed on the eve of the arbitration hearing, was untimely and, in the absence of a timely submission on the issue, American Transit had failed to establish it timely mailed verification requests to Sanford. Thus, the Verification Defense was rejected. An arbitrator properly acts within their discretionary authority when they weigh the evidence before them, as well as exercise their discretion to accept or reject untimely submissions (*Matter of Global Liberty Ins. Co. v Coastal Anesthesia Servs.*, LLC, 145 AD3d 644 [1st Dept 2016]; *Matter of Mercury Cas. Co. v Healthmakers Med. Group*, P.C. 67 AD3d 1017 [2d Dept 2009]). It was neither arbitrary nor capricious for the arbitrator to reject American Transit's untimely submission of its Verification Defense, which was filed on the eve of the arbitration hearing (*id.*). Indeed, had the master arbitrator disturbed the arbitrator's proper exercise of their discretionary authority to reject untimely submissions, the master arbitrator's award would be subject to vacatur (*Acuhealth Acupuncture, P.C. v Country-Wide Ins. Co.*, 176 AD3d 799 [2d Dept 2019] [master arbitration award vacated as improperly disturbing arbitrator's discretion to reject untimely submissions]).

As to the arbitrator's initial mistaken statement that the parties had stipulated to deem American Transit's denials timely, the arbitrator corrected its mistaken statement on remand, clarifying that the parties had never stipulated to deem American Transit's denials timely.

American Transit's reliance on *American Transit Insurance Company v PDA NY Chiropractic, P.C.* for its argument that the arbitrators committed an error of law in not considering its Verification Defense is misplaced (80 Misc.3d 1208[A] [Sup Ct Kings Cty, 2023]). *PDA NY Chiropractic* is not binding authority on this Court and, in any event, is factually distinguishable. The timeliness of a Verification Defense was not at issue in *PDA NY Chiropractic*; instead, that case addressed whether partial responses to requests for verification were sufficient under the law (*id*. at 13), which is not the issue here.

Finally, there are no well-defined or strong policy or constitutional considerations which would otherwise favor vacatur of the arbitration award (*New York State Correctional Officers & Police Benevolent Ass'n v State*, 94 NY2d 321 [1999]).

Accordingly, the Court denies American Transit's petition to vacate the arbitration awards.

Confirmation of Award

Where a motion to vacate an arbitration award is denied, the Court must confirm the award (CPLR § 7511[e]; *see also Matter of Board of Educ. of Ardsley Union Free School Dist., Town of Greenburgh v Ardsley Congress of Teachers*, 78 AD2d 879 [2d Dept 1975]).

Accordingly, the Court grants Medical Providers' cross-motion to confirm the arbitration awards.

Attorney's Fees

"The general rule is that in proceedings involving arbitration, as in other litigation, an attorney's fee is not recoverable unless provided for by agreement or statute" (*Matter of GEICO Ins. Co. v AAAMG Leasing Corp.,* 148 AD3d 703 [2d Dept 2017]). 11 NYCRR § 65-4.6(b) provides for attorney's fees in the amount of 20% of the arbitration award, plus interest. 11 NYCRR § 65-4.10(j)(4) provides that "in a court appeal from a master arbitration award" the Court shall fix the attorney's fees for the work performed in the court appeal. CPLR Article 75 actions to confirm a master arbitration award constitute "a court appeal" under the regulation (*Matter of Geico Ins. Co.*, 148 AD3d at 705); thus, the Court may set attorney's fees incurred for the instant special proceeding.

Where attorney fees are authorized, either by statute or agreement, the fee sought must be reasonable (*American Motorists Ins. Co. v Napco Sec. Sys.*, 244 AD2d 197 [1st Dept 1997]). In determining the reasonableness of attorney's fees, the Court considers the attorney's affidavit and submissions to elicit the "difficulty of the issues and the skill required to resolve them; the lawyers' experience, ability and reputation; the time and labor required; the amount involved and benefit resulting to the client from the services; the customary fee charged for similar services; the contingency or certainty of compensation; the results obtained and the responsibility involved" (*Bankers Fed. Sav. Bank v Off W. Broadway Devs.*, 224 AD2d 376 [1st Dept 1996]).

Medical Providers' attorney's fees for the underlying arbitration are fixed at 20% of the arbitration award plus interest pursuant to 11 NYCRR § 65-4.6(b), not to exceed $1,360.00. As to the additional fees incurred in this special proceeding, Medical Providers' counsel sought $1,875.00, representing 3.75 hours of work at $500 per hour. The amount of time for which counsel seeks compensation is supported by counsel's records, which show the total hourly expenditures exceed the number of hours sought. As to the hourly rate billed by counsel, considering counsel's 20 years of no-fault experience, ability, and reputation; the benefit to the Medical Providers; the amount of time

necessary; and the uncertainty of compensation, the Court finds $500 per hour reasonable compensation. Accordingly, the $1,875 attorney's fee for work performed in this matter is reasonable (11 NYCRR § 65-4.10(j)(4); *Matter of Geico Ins. Co.*, 148 AD3d at 705).

Accordingly, it is

ORDERED that American Transit's petition to vacate the arbitration and master arbitration awards is denied; and it is further

ORDERED that the cross-motion of Provista Med Inc. and Sanford Radiology PC to confirm the arbitration and master arbitration awards is granted; and it is further

ORDERED, DECLARED, and ADJUDGED that Provista Med Inc. and Sanford Radiology PC shall have judgment and do recover the amount of the arbitration award in the sum of $3,941.45 as against American Transit Insurance Company with interest at 2%, pursuant to 11 NYCRR § 65-3.9, from the date of the arbitration award, April 30, 2024, together with costs and disbursements, as calculated by the Clerk of the Court; and it is further

ORDERED, DECLARED, and ADJUDGED that Provista Med Inc. and Sanford Radiology PC shall have judgment and do recover as and for reasonable attorney's fees the sum of $1,875.00 for this special proceeding, plus statutory attorney's fees of 20% of the arbitration award together with interest as calculated by the Clerk of the Court in the aforementioned paragraph under 11 NYCRR § 65-4.6(b), plus $110.50 for the master arbitration fee; and it is further

ORDERED that judgment shall be submitted to the Clerk of the Court and not to chambers or the part, unless directed otherwise by the Clerk of the Court.

20251126114835KCWATER4E1B3023300469 7B30A83DFFF3DB672

11/26/2025
DATE

KATHLEEN WATERMAN-MARSHALL, J.S.C.

CHECK ONE:	[X] **CASE DISPOSED**		[ ] **NON-FINAL DISPOSITION**	
	[ ] **GRANTED**	[ ] **DENIED**	[X] **GRANTED IN PART**	[ ] **OTHER**
APPLICATION:	[ ] **SETTLE ORDER**		[ ] **SUBMIT ORDER**	
CHECK IF APPROPRIATE:	[ ] **INCLUDES TRANSFER/REASSIGN**		[ ] **FIDUCIARY APPOINTMENT**	[ ] **REFERENCE**