

American Tr. Ins. Co. v Custom RX Pharm. LLC.

2025 NY Slip Op 34790(U)

December 10, 2025

Supreme Court, New York County

Docket Number: Index No. 650703/2025

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M

Justice

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INDEX NO. 650703/2025

AMERICAN TRANSIT INSURANCE COMPANY,

MOTION DATE 02/06/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

CUSTOM RX PHARMACY LLC.,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 12, 13, 14, 15, 16

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

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner American Transit Insurance Company (“ATIC”) moves pursuant to CPLR § 7511 to vacate a master arbitration award affirming an underlying award in favor of Respondent Custom RX Pharmacy LLC, a health care provider assignee of claimant Rosa Jara, in the amount of \$3,429.00. Respondent opposes and cross-petitions for statutory costs and attorney’s fees pursuant to CPLR 8202 and 11 NYCRR 65-4.10(j)(4). For the reasons set forth below, the petition is denied, the award is confirmed, and Respondent’s request for fees is granted.

Respondent sought no-fault reimbursement for pharmaceutical services provided on November 14, 2022. Petitioner denied the claim based on lack of medical necessity, relying exclusively on an Independent Medical Examination (“IME”) issued by Dr. Margulies on April 12, 2019. After consideration of the parties’ submissions and hearing argument, the lower arbitrator found the IME inadequate to meet Petitioner’s burden and awarded Respondent \$3,429.00, plus statutory interest and fees.

The lower arbitrator further noted that the same IME report had already been rejected in two prior matters involving the same claimant and was previously held insufficient by both an arbitrator and a master arbitrator.

On appeal, Master Arbitrator Henry Sawits affirmed the award, holding that each of the lower arbitrator's findings had a rational basis, and emphasizing that a master arbitrator cannot perform a de novo weighing of evidence.

Petitioner then commenced this Article 75 proceeding, alleging that both arbitrators failed to follow "settled law" and that their reliance on prior determinations constituted error.

Respondent opposes, asserting that the awards are rational, supported by the record, and must be affirmed, and seeks statutory attorney's fees and costs for opposing the petition.

LEGAL STANDARD

A petition to vacate an award pursuant to CPLR § 7511(b)(1)(iii) will be granted only when one of the following circumstances is shown: (1) the arbitrator has exceeded a specifically enumerated limitation on his authority; (2) the decision is totally irrational; or (3) the award is violative of a strong public policy. (*see Bd. of Educ. of Dover Union Free School Dist. v Dover-Wingdale Teachers' Ass'n*, 61 NY2d 913, 915 [1984]). "Courts are reluctant to disturb the decisions of arbitrators lest the value of this method of resolving controversies be undermined." (*Matter of Goldfinger v Lisker*, 68 NY2d 225, 229 [1986]).

The Court does not review de novo whether the hearing arbitrator made the "best" factual or evidentiary decision; it asks only whether the award is arbitrary, capricious, irrational, or incorrect as a matter of substantive law (*Petrofsky (Allstate Ins. Co.), In re*, 54 NY2d 207, 210 [1981]). Errors involving the weighing of evidence, credibility or timeliness are factual, not legal, and lie beyond CPLR 7511.

DISCUSSION

Petitioner's challenge rests entirely on disagreement with how the arbitrators weighed medical evidence. The IME had already been found unpersuasive multiple times by other arbitrators reviewing the same claimant and the same IME report.

The master arbitrator explicitly held that the lower arbitrator was permitted to determine the preclusive effect of prior arbitration awards, citing *In re Falzone (New York Cent. Mut. Fire Ins. Co.)*, 15 NY3d 530, 532 [2010]. Petitioner does not meaningfully contest this principle, nor provide contrary authority.

Thus, Petitioner's argument is a request for the Court to reweigh the medical evidence. Such review is prohibited. (*Petrofsky*, 54 NY2d 207).

Petitioner has not demonstrated corruption, bias, lack of due process, or any violation of public policy. The arbitrator applied the appropriate burden-shifting framework, considered the IME, evaluated credibility, and rationally rejected it based on record inconsistencies noted repeatedly in prior proceedings.

Even assuming error, legal or factual error is insufficient to vacate an award so long as the result has a rational basis. *Goldfinger*, supra. No irrationality has been shown here.

Petitioner's Article 75 challenge is substantively indistinguishable from routine no-fault disputes that have already been adjudicated through arbitration and master arbitration review. As set forth above, the standard of judicial review is intentionally narrow; courts are not permitted to reweigh evidence or supplant the arbitrators' factual determinations.

Despite this well-settled framework, Petitioner initiated this proceeding without identifying any basis that would qualify as a statutory ground for vacatur under CPLR 7511(b).

The Petition asserts mere disagreement with how arbitrators evaluated the IME, and invites the Court to conduct precisely the kind of evidentiary re-evaluation that controlling law forbids.

New York's no-fault regulations recognize that unnecessary Article 75 filings undermine the very purpose of no-fault arbitration which are designed to provide speedy, economical resolution. Thus, when a health care provider is forced to defend a baseless petition challenging an arbitration award, the regulations mandate that the attorney's fee must be fixed by the court. 11 NYCRR 65-4.10(j)(4).

The Appellate Division has repeatedly held that lower courts do not have discretion to withhold such fees, and that failure to award them constitutes legal error. For example, the Second Department held that. "[t]o the extent the court denied relief on the ground that it lacked authority to award an additional attorney's fee, the court erred. (*Matter of GEICO Ins. Co. v AAAMG Leasing Corp.*, 148 AD3d 703, 706 [2d Dept 2017]).

Here, Respondent submitted an affidavit stating that two hours were expended opposing the petition, at a rate of \$400 per hour, reflecting no-fault specialization and experience. The Court finds that time reasonable, consistent with the mandatory regulation and prevailing decisions.

Additionally, Respondent seeks \$100 in statutory costs pursuant to CPLR 8202. Courts have awarded such costs where insurers file petitions that lack any valid legal basis, thereby delaying payment and burdening judicial resources.

Here, Petitioner's filing served only to reargue factual issues already resolved in arbitration, with no identified statutory ground for vacatur. Accordingly, the Court awards both attorney's fees pursuant to 11 NYCRR 65-4.10(j)(4) and costs pursuant to CPLR 8202.

Because Petitioner has not shown (1) corruption or misconduct, (2) partiality, (3) that either arbitrator exceeded her power, or (4) a failure to follow CPLR Article 75 procedure, the petition must be denied. Moreover, Respondent has proved their entitlement to statutory fees in their cross-petition, and as such the cross-petition is granted. The court has considered the remaining arguments and finds such unavailing.

Accordingly; it is hereby

ORDERED that the petition of American Transit Insurance Company to vacate the arbitration awards rendered in AAA Case No. 99-23-1294-6974 is denied in its entirety; and it is further

ORDERED that the master-arbitration award of Henry Sawits, Esq. dated February 6, 2025 affirming the award of Perry Criscitelli, Esq. is confirmed in all respects; and it is further

ORDERED that Respondent is awarded \$800.00 in attorney’s fees; and it is further

ORDERED that Respondent is awarded \$100.00 in costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.


The foregoing constitutes the decision and order of the Court.

12/10/2025
DATE

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION OTHER

APPLICATION: GRANTED SETTLER ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE



LESLIE A. STROTH, J.S.C.