

**American Tr. Ins. Co. v RS Med.**

2025 NY Slip Op 34791(U)

December 10, 2025

Supreme Court, New York County

Docket Number: Index No. 652235/2025

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*

-----X

AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

RS MEDICAL,

Defendant.

-----X

INDEX NO. 652235/2025

MOTION DATE 04/08/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 12, 13, 14, 15, 16, 17, 20, 21, 22

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 RS Medical, assignee of claimant Jamilia J. Williams, in the amount of \$3,136.62 for a prescription RS-4i plus sequential stimulator and related supplies billed for January 31, 2024. Respondent opposes and cross-petitions for statutory fees and costs.

ATIC denied the claim based on lack of medical necessity, relying solely on a peer review by Dr. Howard Levy dated February 29, 2024. Dr. Levy contended that the device was not supported by the claimant’s treatment history, asserting that the assignor had undergone no relevant chiropractic or conservative care for more than seven months and that no causal basis existed for the prescription.

After hearing submissions, Arbitrator Fred Lutzen rejected ATIC’s defense. The arbitrator found that Dr. Levy’s opinion relied on inaccurate factual assumptions. Specifically, the Arbitrator found his assertion that there was no treatment during the relevant period, a

statement disproven by publicly available linked arbitration records reflecting chiropractic care on multiple dates, including August 4, 2023; August 18, 2023; September 8, 2023; October 11, 2023; November 15, 2023; and December 29, 2023, where the same treating provider prescribed the RS-4i unit.

The arbitrator further held that Dr. Levy incorrectly described the RS-4i device as a TENS unit, whereas the billing records indicate it combines NMES and interferential therapy, rendering his cited medical literature inapplicable. Because ATIC failed to meet its initial burden of demonstrating lack of medical necessity, the arbitrator awarded \$3,136.62 plus interest.

ATIC appealed. Master Arbitrator Victor J. D'Ammora affirmed, holding that a master arbitrator may not re-weigh evidence and only disturb a decision that is arbitrary, capricious, unsupported by the record, or incorrect as a matter of law. Because Arbitrator Lutzen's conclusions rested on factual review and not misapplication of law the award was affirmed.

Despite the two-tier arbitration process, Petitioner commenced this Article 75 proceeding. Respondent cross-petitions to confirm the awards and seeks statutory attorney's fees pursuant to 11 NYCRR 65-4.10(j)(4), statutory arbitration fees, and filing costs.

### 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

The petition must be denied. ATIC presents no cognizable basis for vacatur under CPLR 7511(b). Instead, the petition reiterates factual arguments concerning the sufficiency of the peer review which were already considered and rejected by both arbitrators. The arbitrator expressly determined that Dr. Levy’s report lacked an accurate factual predicate and misidentified the equipment at issue.

These are textbook issues of factual assessment and evidentiary weight, which are beyond the judicial scope of review. Courts do not examine whether an arbitrator reached the “best” factual decision; they ask only whether the award is irrational or violates strong public policy. (*Petrofsky*, 54 NY2d 207).

There is no showing of bias, misconduct, procedural irregularity, or excess of authority. Nor does ATIC identify any settled law misapplied by either arbitrator. The master arbitrator properly refused to conduct a de novo factual review and affirmed based on the rational support in the record.

Moreover, Article 75 filings challenging routine no-fault determinations without statutory grounds undermine the purpose of mandatory arbitration to provide speedy, final resolution and compel providers to incur avoidable litigation expenses. New York law therefore mandates attorney’s fees for providers forced to defend such challenges. 11 NYCRR 65-4.10(j)(4).

Respondent seeks a statutory fee for one hour at \$65.00 as set forth in its cross-petition. The Court finds such fee warranted.

Having prevailed at both arbitration levels and in this proceeding, Respondent is entitled to statutory arbitration fees, filing costs, and statutory interest. No contrary authority has been offered to defeat these awards.

Accordingly, it is hereby:

ORDERED that the Petition of American Transit Insurance Company to vacate the arbitration award in AAA Case No. 99-24-1347-6387 is denied in its entirety; and it is further,

ORDERED that the master-arbitration award of Victor K. D’Ammora, Esq. dated January 24, 2025 affirming the award of Fred Lutzen, Esq. is confirmed in all respects; and it is further


ORDERED that Respondent RS Medical is awarded the full claim amount of \$3,136.62, plus statutory interest; and it is further,

ORDERED that Respondent is awarded attorney’s fees in the amount of \$65.00; and it is further,

ORDERED that Respondent is awarded statutory arbitration fees of \$75.00 and the AAA filing fee of \$40.00; and it is further,

ORDERED that the Clerk shall enter judgment accordingly.

12/10/2025  
DATE

  
LESLIE A. STROTH, J.S.C.

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION  OTHER

APPLICATION:  GRANTED  GRANTED IN PART  SUBMIT ORDER

CHECK IF APPROPRIATE:  SETTLE ORDER  INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE