

**American Tr. Ins. Co. v Shop RX Pharm. Inc.**

2025 NY Slip Op 34909(U)

December 10, 2025

Supreme Court, New York County

Docket Number: Index No. 651611/2025

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 -

SHOP RX PHARMACY INC,

Defendant.

-----X

INDEX NO. 651611/2025

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

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 issued in favor of Respondent Shop RX Pharmacy Inc., assignee of claimant Gayle Samuel, arising from pharmaceutical claims for medications billed on April 25, 2023 and June 5, 2023. Respondent opposes and cross-petitions for statutory attorney’s fees and costs.

The underlying arbitration concerned two categories of charges: (1) Naproxen, Esomeprazole, and Cyclobenzaprine, which were partially denied based on a peer review authored by Dr. Richard Coven dated September 12, 2023; and (2) Lidocaine charges of \$1,910.00 for each date of service, which ATIC denied in full on the ground of non-receipt of the bills. The arbitrator issued a split award: he accepted ATIC’s medical-necessity defense regarding the first category but found Respondent met its prima facie case on the mailing issue for the Lidocaine charges, citing Respondent’s USPS ledger proving mailing and the absence of competent documentary rebuttal from ATIC.

The arbitrator awarded Respondent \$3,820.00 plus statutory interest, attorney's fees, and filing fees.

ATIC appealed only the portion of the award addressing the mailing issue. The master arbitrator affirmed, holding that a master arbitrator cannot reweigh evidence and may intervene only if the lower award is irrational, violates public policy, or exceeds statutory authority.

Instead of complying with the award, ATIC initiated this Article 75 proceeding seeking vacatur. Respondent opposes and submits a cross-petition seeking \$600 in attorney's fees pursuant to 11 NYCRR § 65-4.10(j)(4), statutory costs of \$100 pursuant to CPLR 8202, and additional court-appearance fees. Respondent separately submitted an affidavit claiming 1.5 hours of work at \$400 per hour.

### 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

ATIC does not assert corruption, misconduct, violation of public policy, or that either arbitrator exceeded his powers. Instead, the petition reasserts factual disputes concerning whether two bills were received. Such arguments were heard by both arbitrators and resolved based on competing proofs. The lower arbitrator explicitly found Respondent established proper mailing through USPS receipts, shifting the burden, and ATIC failed to produce competent evidence to rebut the presumption.

The master arbitrator correctly restricted appellate review to whether the lower award had a rational basis, citing *Petrofsky*, 54 NY2d 207 and regulatory constraints. Judicial review is narrower still. The Court may not revisit evidentiary conclusions, weigh proof, or substitute its judgment for that of the arbitrators.

Even if ATIC disagreed with how evidence was weighed, no irrationality has been shown. Disagreement with factual findings is not a basis for vacatur under CPLR 7511(b)(1)(iii). Thus, the award must be confirmed.

Respondent seeks attorney's fees under 11 NYCRR 65-4.10(j)(4), which mandates that courts fix attorney's fees when a provider prevails on an appeal from a master arbitration award. While the regulation applies here, Respondent bears the burden of demonstrating the reasonable value of services rendered.

The affidavit submitted states that counsel spent 1.5 hours and requests \$600, but provides no time records, no description of work performed, and no verification of how the 1.5 hours was calculated.

The only document produced regarding time (a one-page case-tracking printout) contains no breakdown of tasks or billing entries.

Statutory fees cannot be awarded for speculative services not yet rendered.

Although the Court would otherwise be required to award a reasonable fee if supported, Respondent has failed to submit adequate proof to allow any reasonable calculation. A statutory entitlement does not eliminate the need for evidentiary support. Accordingly, the cross-petition is denied without prejudice to renew with a properly supported application.

Accordingly; it is hereby

ORDERED that the Petition of American Transit Insurance Company to vacate the arbitration award in AAA Case No. 99-23-1324-5745 is denied in its entirety; and it is further


ORDERED that the master arbitration award of Francisco Cruz, Esq. affirming the award of Arbitrator Kevin R. Glynn, Esq. dated January 5, 2025 is confirmed in all respects; and it is further

ORDERED that Respondent SHOP RX PHARMACY INC is awarded the full claim amount of \$3,820, plus statutory interest and fees as set forth in the Arbitration Award (NYSCEF Doc No. 3); and it is further,

ORDERED that Respondent's cross-petition for attorney's fees and statutory costs is denied, without prejudice to renew; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

12/10/2025  
DATE

  
LESLIE A. STROTH, J.S.C.

|                       |   |  |   |                                    |
|-----------------------|---|--|---|------------------------------------|
| CHECK ONE:            | <input type="checkbox"/> CASE DISPOSED              | <input checked="" type="checkbox"/> DENIED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION | <input type="checkbox"/> OTHER     |
| APPLICATION:          | <input type="checkbox"/> GRANTED                    |  | <input type="checkbox"/> GRANTED IN PART                  |                                    |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> SETTLE ORDER               |  | <input type="checkbox"/> SUBMIT ORDER                     |                                    |
|                       | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN |  | <input type="checkbox"/> FIDUCIARY APPOINTMENT            | <input type="checkbox"/> REFERENCE |