

American Tr. Ins. Co. v Friendly RX Inc

2026 NY Slip Op 30093(U)

January 8, 2026

Supreme Court, New York County

Docket Number: Index No. 653157/2025

Judge: David B. Cohen

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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. DAVID B. COHEN PART 58

Justice

-----X

AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

INDEX NO. 653157/2025

MOTION DATE 05/22/2025

MOTION SEQ. NO. 001

- v -

FRIENDLY RX INC DBA FRIENDLY RX PHARMANCY,

Defendant.

**DECISION + ORDER ON
MOTION**

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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.

Pursuant to CPLR Article 75, petitioner moves for an order and judgment vacating an arbitration award rendered against it. By notice of cross-petition, respondent opposes the petition and cross-moves for a judgment confirming the award and granting it attorney fees pursuant to 11 NYCRR 65-4.10(j)(4). Petitioner opposes the cross-petition.

CPLR 7511(a) provides that “[a]n application to vacate or modify an [arbitration] award may be made by a party within ninety days after its delivery to him.” Pursuant to CPLR 7511(b)(iii), an arbitration award may be vacated if, as pertinent here, the arbitrator “exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made.” An award will not be vacated on this ground unless the party seeking vacatur demonstrates that it is totally irrational, violates public policy, or exceeds a specifically enumerated limitation on the arbitrator's power (*Matter of Kowaleski v New York State Dept. of Correctional Servs.*, 16 NY3d 85 [2010]; *Matter of New York City Tr. Auth. v Transp. Workers*

Union of Am., Inc., Local 100, et al., 14 NY3d 119 [2010]). If a motion to vacate an arbitration award is denied, the court must confirm it (CPLR 7511[e]).

The scope of judicial review of an arbitration proceeding is extremely limited (*Matter of Campbell v New York City Tr. Auth.*, 32 AD3d 350 [1st Dept 2006]), and the court must give deference to the arbitrator's decision (*Matter of New York City Tr. Auth. v Transp. Workers' Union of Am., Local 100, AFL-CIO*, 6 NY3d 332 [2005]). In reviewing an award, the court is bound by the arbitrator's factual findings and interpretations of the agreement at issue (*Matter of Brown & Williamson Tobacco Corp. v Chesley*, 7 AD3d 368 [1st Dept 2004]), and may not “examine the merits of an arbitration award and substitute its judgment for that of the arbitrator simply because it believes its interpretation would be the better one” (*Matter of New York State Correctional Officers & Police Benevolent Assn., Inc. v State of New York*, 94 NY2d 321, 326 [1999]). An award is “rational” if “any basis for [its] conclusion is apparent to the court” (*Caso v Coffey*, 41 NY2d 153, 158 [1976]), and may be found irrational only if there is no proof to justify it (*Matter of Cherry v New York State Ins. Fund.*, 83 AD3d 446 [1st Dept 2011]; *Matter of Peckerman v D&D Assocs.*, 165 AD2d 289 [1st Dept 1991]).

Here, the lower arbitrator ruled that petitioner had not shown that it properly delayed payment of a claim because of a pending verification request, as it did not submit proof that it scheduled an Examination Under Oath (EUO) and/or mailed EUO letters, or sent delay letters to respondent regarding the bill at issue. Absent such evidence, the arbitrator found, petitioner did not establish that it properly tolled the time to pay or deny the claim (NYSCEF 3).

On appeal, the master arbitrator upheld the determination, finding that:

In addition to the fact that [petitioner's] alleged initial delay letter to claimant and her attorney, dated July 2nd, 2024, was issued more than 30 days after [petitioner] had received applicant's claim for services, there was also no proof in the record that claimant's EUO was timely or properly requested in connection with applicant's claim

for benefits. [Petitioner] did not submit any proof of a proper scheduling of claimant's EUO, or any proof that it ever sent claimant, her attorneys or applicant a copy of any such EUO scheduling letter. It also is clear that [petitioner] did not submit into evidence any proof that it properly and timely processed applicant's claim after it had received same on April 19th, 2024. [Petitioner] also did not prove that it never received the verification it had allegedly requested (citations omitted).

In its master arbitration submission, counsel for respondent complete ignores the portions of the award finding respondent failed to prove that it mailed any proper or timely verification requests to applicant herein, nor that respondent had not submitted sufficient evidence to establish that it never received the items of verification that it contended were outstanding. In no manner can the flaws in respondent's claim processing of this matter be deemed nonsubstantive, merely technical nor immaterial as such terms are used in 11 NYCRR 65- 3.5(p).

(NYSCEF 4).

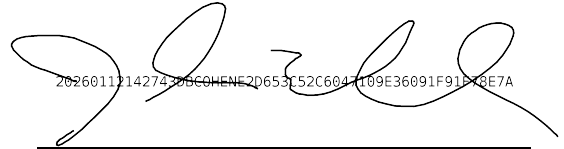
As the lower arbitrator evaluated the evidence and the parties' arguments, and as the decision is supported by the evidence and the applicable law and thus has a rational basis, petitioner has failed to demonstrate that master arbitrator's decision to uphold the award should be vacated (*see e.g., State Farm Mut. Auto. Ins. Co. v Surgicore of Jersey City, LLC*, 195 AD3d 454 [1st Dept 2021] [insurer must provide proof that EUO requests were timely mailed within 15 business days of receipt of prescribed verification forms]).

Pursuant to CPLR 7510, an arbitration award shall be confirmed if not vacated, and thus the cross-petition is granted. Attorney fees are recoverable by a claimant for services rendered in an Article 75 proceeding to vacate or confirm an arbitration award, in an amount to be fixed by the court (*Am. Tr. Ins. Co. v Yom*, __ AD3d __, 2025 WL 3467251 [2d Dept 2025]; *Matter of Country-Wide Ins. Co. v TC Acupuncture P.C.*, 179 AD3d 414 [1st Dept 2020]).

Respondent's counsel requests an attorney fee of \$950, representing a \$500 hourly rate, and 1.9 hours of work on the matter, along with costs and disbursements, which I found to be reasonable.

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition to vacate is denied; and it is further
 ORDERED and ADJUDGED that the cross-petition is granted, and the master arbitration
 award dated March 21, 2025 is hereby confirmed pursuant to CPLR 7510; and it is further
 ORDERED and ADJUDGED that respondent submit a proposed judgment for its fees
 and costs forthwith.



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1/8/2026
 DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED
<input type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input checked="" type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: