

<b>American Tr. Ins. Co. v Athena Chiropractic PC</b>
2026 NY Slip Op 30402(U)
January 29, 2026
Supreme Court, New York County
Docket Number: Index No. 652963/2025
Judge: Phaedra Perry-Bond
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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. PHAEDRA F. PERRY PART 35**

*Justice*

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INDEX NO. 652963/2025

AMERICAN TRANSIT INSURANCE COMPANY,

MOTION DATE 05/14/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

ATHENA CHIROPRACTIC PC,

**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

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

Upon the foregoing documents, the Court denies Petitioner American Transit Insurance Company’s (“Petitioner”) petition to vacate the arbitration award issued by Arbitrator Linda Filosa, Esq., on 11/27/24, and Master Arbitrator Toby Susan DeSimone, Esq., rendered in favor of Respondent Athena Chiropractic PC / Angela Whitted (“Respondent”) in the amount of \$3,575.60. Respondent’s cross-petition to confirm the arbitration award and for attorneys’ fees is denied without prejudice.

The underlying claims total \$4,236.90 for medical services rendered on 3/17/23 – 6/7/23. Angela Whitted sought medical treatment from medical providers to treat injuries sustained in a motor vehicle accident on 3/16/23. Respondent is one of the medical providers that rendered treatment to Angela Whitted, who assigned the right to collect no-fault benefits to the Respondent in exchange for the medical treatment received.

Petitioner refused to pay certain medical bills from Respondent alleging that the claimants treated condition, and alleged injuries were not causally related to the accident based on an opinion from biomechanical science expert, Zachary Merrill, P.H.D., dated 11/16/23.

Respondent initiated arbitration and was assigned number 99-24-1350-8496 by the American Arbitration Association.

Arbitrator Filosa awarded Respondent \$3,575.60 and found that the workers' compensation and outstanding verification defenses could not be sustained.

Master Arbitrator DeSimone affirmed the award, finding that Arbitrator Filosa's interpretation of the evidence and applicable law was not arbitrary, capricious or contrary to law.

In the context of no-fault arbitrations, an arbitrator's decision will not be vacated where it is rationally based (*Petrofsky v Allstate Ins. Co.*, 54 NY2d 207 [1981]). An Article 75 proceeding is not an opportunity for "judicial second-guessing" of an arbitrator's findings, and courts are bound by the arbitrator's factual findings (*Metropolitan Transportation Auth. v Westfield Fulton Center, LLC*, 228 AD3d 435, 436 [1st Dept 2024]). Here, the Court finds the master arbitrator's affirmance of the lower arbitrator's award was not irrational and was based in the applicable no-fault regulations (*see, e.g. Global Liberty Ins. Co. v Cambridge Medical, P.C.*, 193 AD3d 573 [1st Dept 2021]). When presented with conflicting evidence, it is up to the arbitrator to evaluate and weigh which evidence is determinative (*Brown & Williamson Tobacco Corp. v Chesley*, 7 AD3d 368, 373-74 [1st Dept 2004] citing *Hackett v Millbank, Tweed, Hadley & McCloy*, 86 NY2d 146 [1995]).

Based on the record before the Court, there is no basis to vacate the arbitration award in favor of Petitioner. Arbitrator Filosa's award is rationally based, grounded in factual findings, based on sound and well-reasoned analysis of the evidence submitted and upon the proper

application of the pertinent laws and regulations, which this Court is not permitted to disturb. Therefore, the petition is denied.

Because Respondent successfully defended this petition to vacate an arbitration award, it is entitled to attorneys' fees pursuant to 11 NYCRR § 65-4.10(j)(4) (*see also American Transit Ins. Co. v Rutland Med. PC*, 224 AD3d 531, 531 [1st Dept 2024]). Moreover, the fee award is in an amount fixed by the Court adjudicating the matter (*see Matter of Country-Wide Ins. Co. v TC Acupuncture P.C.*, 172 AD3d 598 [1st Dept 2019; *see also Matter of Country-Wide Ins. Co. v Bay Needle Care Acupuncture, P.C.*, 162 AD3d 407, 408 [1st Dept 2018]).

However, Respondents request for attorney's fees in the amount of \$875.00 is denied without prejudice to renew upon submission of an invoice/time sheet outlining the specific breakdown of work done opposing the Petition.

Accordingly, it is hereby,

ORDERED that Petitioner American Transit Insurance Company's petition to vacate the arbitration award issued by Arbitrator Nancy Filosa dated November 27, 2024, in favor of Respondent Athena Chiropractic PC / Angela Whitted, and affirmed by the Master Arbitrator De Simone is denied; and it is further

ORDERED that within ten days of entry of this Decision and Order, Respondent Athena Chiropractic PC / Angela Whitted shall submit a proposed order and judgment granting Respondent Athena Chiropractic PC / Angela Whitted's cross-petition and granting it a judgment against Petitioner American Transit Insurance Company for the amount awarded (\$3,575.60) plus statutory interest at the rate of 2% per month from June 5, 2024 as awarded by Arbitrator Filosa; and it is further

ORDERED that Respondents request for attorney’s fees under 11 NYCRR 65-4.10(j)(4) is denied with leave to renew upon submission within ten days of an invoice/time sheet outlining the specific breakdown of the work done opposing the Petition; and it is further

ORDERED that the proposed order and judgment shall be submitted via e-mail to SFC-Part35-Clerk@nycourts.gov; and it is further

ORDERED that within ten days of entry, counsel for Respondent shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

1/29/26  
DATE

  
HON. PHAEDRA PERRY-BOND, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE