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| <b>American Tr. Ins. Co. v Shop RX Pharm. Inc.</b>   |
| 2026 NY Slip Op 30432(U)   |
| February 4, 2026   |
| Supreme Court, New York County   |
| Docket Number: Index No. 654521/2025   |
| 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. 654521/2025

AMERICAN TRANSIT INSURANCE COMPANY,

MOTION DATE 07/30/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

SHOP RX PHARMACY INC,

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, 17

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

Upon the foregoing documents, it is

Upon the foregoing documents, the Court denies Petitioner American Transit Insurance Company's ("Petitioner") petition to vacate the arbitration award issued by Arbitrator Ellen Cutler-Igoe, ("Arbitrator Cutler-Igoe") dated 3/2/2025, in favor of Respondent Shop RX Pharmacy Inc., ("Respondent"), and affirmed by Master Arbitrator Richard B. Ancowitz, ("Master Arbitrator Ancowitz") on 5/9/2025. Respondent's cross-petition to confirm the arbitration award and for attorneys' fees is denied without prejudice.

The claim at issue in the amount of \$3,820.00 for the dates of service 4/12/2023 - 6/16/2023. Shara Yarde was involved in a motor vehicle accident on 2/25/23 and sought medical treatment from medical providers to treat injuries sustained in the motor vehicle accident. Sharda Yarde assigned the right to collect no-fault benefits to the Respondent in exchange for the medial treatment received. Petitioner refused to pay certain medical bills from Respondent alleging a lack of medical necessity based upon Dr. Richards Covern's peer review report dated 11/15/2023.

Respondent filed for arbitration with the American Arbitration Association (AAA) and was assigned the case number 99-1326-4220. Following a hearing on 3/5/2025, Arbitrator Cutler-Igoe ruled in favor of Respondent and awarded \$3,802.00.

On appeal, Master Arbitrator Ancowitz affirmed Arbitrator Cutler-Igoe's award.

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 Cutler-Igoe'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.

To the extent that Petitioner argues that Respondent's opposition and cross-petition are late, New York's public policy strongly favors resolving cases on the merits as opposed to picayune technicalities (*Genao v Salcedo Maintenance Corp.*, 168 AD3d 528, 528-529 [1st Dept

2019] citing *Yea Soon Chung v Mid Queens LP*, 139 AD3d 490 [1st Dept 2016]). In this case, Respondent filed its opposition and cross-petition on 8/22/2025, 6 days before the 8/28/2025 hearing, instead of the required 8 days.

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]). Therefore, the Petitioner's argument about a statutory cap on fees is incorrect and misplaced. However, Respondents request for attorney's fees in the amount of \$1000.00 (400 x 2.5 hours) 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 Cutler-Igoe dated 3/2/2025, in favor of Respondent Shop RX Pharmacy Inc., and affirmed by Master Arbitrator Ancowitz is denied; and it is further

ORDERED that within ten days of entry of this Decision and Order, Respondent Shop RX Pharmacy Inc., shall submit a proposed order and judgment granting Respondent Shop RX Pharmacy Inc.'s cross-petition and granting it a judgment against Petitioner American Transit Insurance Company for the amount awarded \$3820.00 plus statutory interest at the rate of 2% per month from 11/22/2023 until entry of a judgment, as awarded by Arbitrator Cutler-Igoe, 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 Respondent is awarded \$100.00 in costs pursuant to CPLR 8202; and it is further

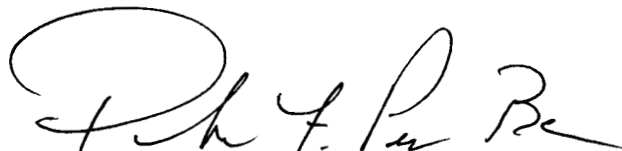
ORDERED that the proposed order and judgment shall be submitted via e-mail to SFC-Part35-Clerk@nycourts.gov; and it is further

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.

2/4/26

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