

Motor Vehicle Acc. Indem. Corp. v Hereford Ins. Co.

2023 NY Slip Op 34505(U)

December 21, 2023

Supreme Court, New York County

Docket Number: Index No. 451713/2023

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH **PART** **14**

Justice

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MOTOR VEHICLE ACCIDENT INDEMNIFICATION CORPORATION A/S/O ANNISSA BARCLAY

Petitioner,

INDEX NO. 451713/2023

MOTION DATE 12/13/2023

MOTION SEQ. NO. 001

- v -

HEREFORD INSURANCE COMPANY,

Respondent.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 30, 31

were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

The petition to confirm the arbitration award is granted.

Background

In this proceeding, petitioner seeks to confirm an arbitration in which it was awarded \$22,594.05. It explains that on December 23, 2020, its claimant (Annisia Barclay) was injured as a passenger in a car insured by respondent. Respondent then denied coverage resulting in petitioner paying out no-fault benefits to Ms. Barclay. Petitioner commenced an arbitration against Hereford and the arbitrator issued a decision in its favor.

Respondent Hereford cross-moves to vacate the award on the ground that the award was procured through corruption, fraud or misconduct. It contends that it no longer covered the subject vehicle on the date of the accident and claims it submitted evidence showing that it sent a cancellation notice prior to the date of the accident. Respondent argues that the insured failed to pay the premiums. It asserts that the arbitrator did not properly consider its evidence and argues

that the vehicle in question was actually insured by a different insurer, American Transit Insurance Company.

In reply, petitioner argues that respondent did not identify a proper basis to vacate the award. It claims that it was respondent's obligation to notify the DMV that the policy had been cancelled within 30 days and that respondent simply failed to do so. Petitioner emphasizes that respondent only submitted to the arbitrator a denial letter, a cancellation letter, and a screenshot of the cancellation. But it did not submit any proof to the arbitrator that the DMV was told about the cancellation. Petitioner claims that the new evidence presented on this record, including the allegation that the vehicle was insured by a different insurer on the date of the accident, was never presented to the arbitrator.

Discussion

“CPLR 7511 provides just four grounds for vacating an arbitration award, including that the arbitrator exceeded his power (CPLR 7511[b][1][iii]), which “occurs only where the arbitrator's award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power. Mere errors of fact or law are insufficient to vacate an arbitral award. Courts are obligated to give deference to the decision of the arbitrator, even if the arbitrator misapplied the substantive law in the area of the contract (*NRT New York LLC v Spell*, 166 AD3d 438, 438-39, 88 NYS3d 34 [1st Dept 2018] [internal quotations and citations omitted]).

The Court begins with the arbitration award itself. The arbitrator found that “[Petitioner] supplied a NY DMV Expansion showing coverage incepting with Hereford effective 8/6/20 and lists them as the current insurance carrier as of the date of the run which was 1/21/21. Respondent did not supply a record from after this time showing the cancel. Respondent did

supply a cancel notice dated 8/27/20 which indicated coverage would be cancelled 9/23/20 at 12:01am for non-payment of premium, but Respondent did not supply a final bill or anything to show the cancel went through on the date and time of the notice. Respondent also supplied a "cancellation screenshot" but it is unclear if this is an internal screen or if this is supposed to be proof of the transmission to the DMV" (NYSCEF Doc. No. 3 at 2).

The Court finds that the award was rational. The arbitrator reached a rational conclusion based on the evidence presented to her. The fact is that the evidence presented to the arbitrator did not conclusively show that respondent met its burden to demonstrate that it had cancelled the insurance policy for the subject vehicle on the date of the accident (*see* Vehicle and Traffic Law § 313 [discussing requirements to cancel an insurance policy]). Petitioner pointed to the DMV information sheet it submitted to the arbitrator which suggested that respondent insured the subject vehicle on the date of the accident (NYSCEF Doc. No. 29).


The Court recognizes that respondent believes that it had properly cancelled the insurance policy and that, in fact, another insurance company provided coverage on the date of the accident. Unfortunately, respondent's reply did not adequately address the fact that none of this information was presented to the arbitrator. Put another way, the Court cannot conclude that the arbitrator's decision was wholly irrational based on documents that were not presented to her. The record here shows that respondent did not submit any information in the arbitration that showed, without a doubt, that it had effectively cancelled the insurance policy.

And this Court's role is only to evaluate the arbitrator's decision; the instant proceeding is not a chance for a de novo review of all of the evidence, including evidence that was not presented to the arbitrator.

Accordingly, it is hereby

ADJUDGED that the petition is granted and the cross-petition is denied and the award rendered in favor of petitioner and against respondent is confirmed; and it is further

ORDERED that Clerk is directed to enter judgment in favor of petitioner and against respondent in the amount of \$22,594.05 plus statutory interest from the date of the award (November 23, 2022) along with costs and disbursements upon presentation of proper papers therefor.

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| 12/21/2023 DATE | | | | |  ARLENE P. BLUTH, J.S.C. | | | |
| CHECK ONE: | <input checked="" type="checkbox"/> | CASE DISPOSED | | <input type="checkbox"/> | NON-FINAL DISPOSITION | | | |
| | <input checked="" type="checkbox"/> | GRANTED | <input type="checkbox"/> | DENIED | <input type="checkbox"/> | GRANTED IN PART | <input type="checkbox"/> | OTHER |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | | <input type="checkbox"/> | SUBMIT ORDER | | | |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | | <input type="checkbox"/> | FIDUCIARY APPOINTMENT | <input type="checkbox"/> | | REFERENCE |