

<b>State Farm Mut. Auto. Ins. Co. v Fiduciary Ins. Co. of Am.</b>
2012 NY Slip Op 33134(U)
December 5, 2012
Supreme Court, Queens County
Docket Number: 8209/12
Judge: Augustus C. Agate
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MEMORANDUM

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE IAS PART 24  
Justice

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STATE FARM MUTUAL AUTOMOBILE INSURANCE  
COMPANY,

Index No.: 8209/12

Plaintiff,

Motion Dated:  
September 18, 2012

-against-

Cal. No.: 23

FIDUCIARY INSURANCE COMPANY OF AMERICA,

M# 2

Defendant.  
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This application by the petitioner to vacate three arbitration awards pursuant to CPLR 7511 is decided as follows:

The petitioner commenced this proceeding to vacate three arbitration awards rendered in favor of respondent Fiduciary Insurance Company of America ("Fiduciary") by Arbitration Forums, Inc. Three occupants of a vehicle insured by respondent sustained injuries on January 23, 2011 when the vehicle was involved in an accident with a vehicle insured by the petitioner State Farm Mutual Automobile Insurance Company ("State Farm"). The occupants received no-fault insurance benefits from respondent Fiduciary. In April 2011, Fiduciary commenced a proceeding in the Supreme Court, New York County, to stay an arbitration proceeding demanded by one of the occupants of the vehicle it insured, Mamadou Jalloh. Respondent Fiduciary subsequently sought reimbursement of the no-fault benefits from petitioner State Farm on the ground that the vehicle it insured

was responsible for the accident and made an application for arbitration on November 7, 2011. On December 27, 2011, the Supreme Court, New York County, by Special Referee Louis Crespo, found that the vehicle insured by petitioner State Farm was stolen at the time of the accident and denied Fiduciary's application to stay arbitration. On February 29, 2012, Arbitration Forums, Inc. issued the arbitration decisions herein in favor of respondent Fiduciary in the total amount of \$52,173.07. The decisions found that Fiduciary proved 100% liability against State Farm and that State Farm had coverage.

In support of its application to vacate the arbitration awards, petitioner alleges that Arbitration Forums, Inc. failed to follow its own procedural rules in refusing to adjourn the three arbitration hearings pending a determination of the related petition in Supreme Court, New York County. In addition, petitioner asserts that pursuant to the doctrine of collateral estoppel, the arbitration awards must be vacated. Specifically, petitioner notes that since the Supreme Court, New York County held that the vehicle petitioner insured was stolen on the date of the accident, Arbitration Forums, Inc. was bound by this decision. Thus, petitioner maintains that inasmuch as the vehicle it insured was stolen on the date of the accident, it was no under no obligation to provide coverage.

An arbitration award may be vacated on the application of a party who participated in the arbitration proceeding if that party's rights were prejudiced by (i) the corruption, fraud or

misconduct in procuring the award; (ii) the partiality of a neutral arbitrator; (iii) the arbitrator exceeding his power so that a final or definite award was not made; or (iv) the arbitrator failing to follow the procedures set forth in CPLR Article 75. (CPLR 7511[b][1]; Matter of Wieder v Schwartz, 35 AD3d 752, 753 [2006].) In addition to the grounds listed in CPLR 7511(b), a court may vacate an arbitration award when it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on an arbitrator's power under CPLR 7511(b). (Matter of TC Contr., Inc. v 72-02 Northern Blvd. Realty Corp., 39 AD3d 762, 763 [2007]; Matter of Henneberry v ING Capital Advisors, LLC, 37 AD3d 353, 353 [2007].)

There is, however, a strong public policy in favor of the binding authority of an arbitration award. (Hackett v Millbank, Tweed, Hadley & McCloy, 86 NY2d 146, 154 [1996].) The purpose of arbitration is to allow final, binding resolution of the parties' claims without resorting to the courts. Thus, judicial review of an arbitration award is extremely limited, and great deference is given to an arbitration award. (Wien & Malkin LLP v Helmsley-Spear, Inc., 6 NY3d 471, 479 [2006]; Allstate Ins. Co. v Geico, \_\_\_ AD3d \_\_\_, 2012 NY Slip Op 07994 [2d Dept 2012]; Matter of Broadcast Music, Inc. (Borinquen Broadcasting Co.), 13 Misc 3d 1228(A) [2006].) A court shall not engage in "judicial second guessing" of the arbitrator's determination of those issues of fact or law presented. (Hackett v Millbank, Tweed, Hadley &

McCloy, 86 NY2d at 155.) An arbitrator is not bound by principles of substantive law or rules of evidence and may do justice as he sees fit. (Matter of Erin Constr. & Dev. Co. v Meltzer, 58 AD3d 729, 730 [2009]; Hughes Contr. Indus., Ltd. v A & N Restoration, Inc., 39 AD3d 378, 379 [2007].) Indeed, an arbitration award will not be vacated even though the court concludes that the arbitrator's interpretation of the agreement misconstrues its plain meaning or misapplies substantive rules of law. (Matter of Silverman v Benmor Coats, Inc., 61 NY2d 299, 308 [1984]; Matter of Wicks Constr., Inc. (Green), 295 AD2d 527, 528 [2002].)

In the case at bar, petitioner's contention that the awards should be vacated because Arbitration Forums, Inc. failed to follow its own procedural rules in refusing to adjourn the arbitration hearings is without merit. As noted above, CPLR 7511(b) (iv) provides for the vacating of an arbitration award where the arbitrator failed to "follow the procedure of *this article...*" (emphasis added). There is nothing in petitioner's papers that alleges that Arbitration Forums, Inc. failed to follow any of the procedures in Article 75 of the CPLR. Rather, petitioner contends that Arbitration Forums failed to follow its own internal procedural rules regarding deferments. Such a failure to follow the procedural rules of an arbitration agreement does not constitute a basis to vacate an arbitration award. (see Matter of Geico Gen. Ins. Co. v Sherman, 307 AD2d

967, 968-969 [2003]; Matter of Janis v New York State Div. of Hous. & Community Renewal, 271 AD2d 878, 879 [2000].) In any event, the papers submitted establish that a deferment was only requested for one of the three arbitration hearings.

Petitioner's other argument that the arbitration awards should be vacated because Arbitration Forums misapplied and misinterpreted the December 27, 2011 Decision and Judgment of the Supreme Court, New York County and, thus, did not apply the doctrine of collateral estoppel is similarly without merit. The Court of Appeals in Matter of Falzone (New York Cent. Mut. Fire Ins. Co.) (15 NY3d 530 [2010]) has held that the failure of an arbitrator to apply the doctrine of collateral estoppel in an arbitration proceeding is not a basis for a court to vacate an arbitration award unless the resulting award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power. In reaching its decision, the Court of Appeals noted the "well-established rule" that arbitration decisions are generally unreviewable. The Court of Appeals also noted that even where an arbitrator has made an error of law or fact, courts generally may not disturb the decision of the arbitrator. (Matter of Falzone [New York Cent. Mut. Fire Ins. Co.], 15 NY3d at 535.) Indeed, the Court of Appeals stated that it was not for it to decide whether the arbitrator erred in not applying the doctrine of collateral estoppel. (Matter of Falzone [New York Cent. Mut. Fire Ins. Co.], 15 NY3d at 534.)

In the matter at hand, petitioner argues that Arbitration Forums misinterpreted and misapplied the prior Decision and Judgment of the Special Referee in Supreme Court, New York County, who found that the vehicle petitioner insured was stolen on the date of the underlying accident. Thus, petitioner argues that respondent was collaterally estopped from contesting the issue of coverage. However, as noted above, the Court of Appeals has specifically rejected petitioner's argument, and this court is bound by such precedent. (see Mountain View Coach Lines, Inc. v Storms, 102 AD2d 663, 664 [1984].) Therefore, there is no basis to vacate the arbitration awards.

Although respondent has not moved to confirm the arbitration awards, the CPLR requires the court, upon denial of a motion to vacate or modify an award, to confirm the arbitration award. (CPLR 7511[e]; Matter of Perilli v New York State Dept. Of Correctional Servs., 80 AD3d 617, 618 [2011]; Matter of Chin v State Farm Ins. Co., 73 AD3d 918, 920 [2010].)

Accordingly, this application by petitioner to vacate three arbitration awards is denied.

The three arbitration awards herein are confirmed.

Settle Judgment.

Dated: December 5, 2012

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AUGUSTUS C. AGATE, J.S.C.