Fiduciary Ins. Co. of Am. v American Bankers Ins. Co. of Florida
2013 NY Slip Op 33996(U)
August 21, 2013
Supreme Court, Queens County
Docket Number: 4678/13
Judge: Jaime A. Rios

[* 1]

Short Form Order and Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JAIME A. RIOS
Justice

IA PART 8

FIDUCIARY INSURANCE COMPANY OF AMERICA,

Petitioner,

- against -

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA,

Respondent.

Index Number: 4678/13

Motion Date: June 26, 2013

Sequence Number: 1

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The following papers numbered 1 through 8 were read on this petition by Fiduciary Insurance Company of America (FICA) to vacate and set aside an arbitration award published on December 12, 2012.

	Papers Numbered
Notice of Petition-Petition-Affirmation-Exhibits.....	1-4
Affirmation in Opposition-Exhibits.....	5-6
Affirmation in Reply-Exhibits.....	7-8

Upon the foregoing papers it is ordered that the petition is determined as follows:

On October 8, 2006, a horse ridden by Jared Johnson (Johnson) was involved in an accident with a vehicle owned and operated by Paramjit Singh (Singh) and insured by FICA. The horse ridden by Johnson was boarded at Cedar Lane Stables and the Federation of Black Cowboys, Inc. (Federation), which was provided commercial insurance coverage under a stable liability policy issued by American Bankers Insurance Company of Florida (American). As a result of that accident, FICA paid first party personal injury protection/no-fault benefits to Johnson under the PIP portion of its policy.

On October 19, 2012, FICA filed a priority of payment claim for arbitration against American for reimbursement of the benefits it had paid. A hearing was subsequently held and, on December 12, 2012, a decision was published. In rendering the decision, the arbitrator noted her consideration of FICA's contentions and the evidence received. The arbitrator held that FICA failed to provide

prima facie evidence that American is a motor vehicle insurer that could be held liable in arbitration under Insurance Law §5105.

American did not participate in the arbitration.

FICA brought the instant petition to vacate the arbitrator's award pursuant to CPLR 7511[b], contending that the arbitration was inherently unfair in that the arbitrator ruled in American's favor despite American's failure to plead that it was not among those insurers who are liable for the payment of first-party no-fault benefits.

American opposes vacatur and seeks confirmation of the arbitrator's award pursuant to CPLR 7511(e), contending that the arbitrator's award was rational in that FICA failed to establish that American was a motor vehicle insurer that would provide first party no fault benefits to or an insurer of a covered person under Insurance Law §5105.

In reply, FICA contends that Johnson was a covered person under Insurance Law §5105, and that the award was irrational as American did not raise an affirmative defense in arbitration.

CPLR 7511(b) provides that an application to vacate an arbitration award by a party who has participated in the arbitration may only be granted upon the grounds that the rights of that party were prejudiced by corruption, fraud, or misconduct in procuring the award, partiality of the arbitrator, the arbitrator exceeded his powers or failed to make a final and definite award, or a procedural failure that was not waived (see Silverman v Cooper, 61 NY2d 299 [1984]; State Farm Mut. Auto. Ins. Co. v Arabov, 2 AD3d 531 [2d Dept 2003]; GEICO Gen. Ins. Co. v Sherman, 307 AD2d 967 [2d Dept 2003]).

Consistent with public policy in favor of arbitration, the grounds specified in CPLR 7511 for vacating or modifying an arbitration award are few in number and narrowly applied, with the list of potential objections being exclusive (see Domotor v State Farm Mut. Ins. Co., 9 AD3d 367 [2004]).

New York State's Insurance Law and the regulations promulgated thereunder provide for mandatory arbitration of no-fault disputes between insurers liable for the payment of first party benefits to or on behalf of a covered person(see Insurance Law §5105; 11 NYCRR 65-4.11).

An arbitration award in a mandatory arbitration proceeding will be upheld if it is supported by the evidence and is not

arbitrary and capricious (see Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co., 89 NY2d 214 [1996]; Furstenberg v Aetna Cas. & Sur. Co., 49 NY2d 757 [1980]; Mount St. Mary's Hosp. v Catherwood, 26 NY2d 493 [1970]; Matter of Travelers Indem. Co. v United Diagnostic Imaging, P.C., 70 AD3d 1043 [2d Dept 2010]; State Farm Mut. Auto. Ins. Co. v Arabov, 2 AD3d 531 [2d Dept 2003]). An arbitration award shall not be set aside by the court for errors of law or fact unless the award is so irrational as to require vacatur (see Hanover Ins. Co. v State Farm Mut. Auto. Ins. Co., 226 AD2d 533 [2d Dept 1996]; Adams v Allstate Ins. Co., 210 AD2d 319 [2d Dept 1994]). "On review, an award may be found to be rational if any basis for such a conclusion is apparent to the court based upon a reading of the record" (Matter of State Farm Mut. Auto. Ins. Co. v City of Yonkers, 21 AD3d 1110 [2d Dept 2005]; see Matter of Travelers Indem. Co. v United Diagnostic Imaging, P.C., 70 AD3d 1043, supra).

The test applicable for review of a compulsory no-fault arbitration award where an error of law is at issue is whether any reasonable hypothesis can be found to support the questioned interpretation. An arbitration award shall not be set aside by the court for errors of law or fact unless the award is so irrational as to require vacatur (see Hanover Ins. Co. v State Farm Mut. Auto. Ins. Co., 226 AD2d 533 [2d Dept 1996]; Adams v Allstate Ins. Co., 210 AD2d 319 [2d Dept 1994]).

There are two types of no-fault disputes between insurers that are subject to mandatory arbitration: loss transfer and priority of payment (see Insurance Law §5105; 11 NYCRR 65-3.12; 11 NYCRR 65-4.11). The arbitration procedures established pursuant to section 5105 of the Insurance Law apply to disputes over priority of payment among insurers who are liable for the payment of first-party benefits (see Insurance Law §5105[a][b]; 11 NYCRR 3.12[b]).

Here, the determination that American was not an insurer liable for the payment of first-party benefits was not an affirmative defense; rather, American's status is a threshold part of FICA's required showing as the applicant seeking reimbursement under Insurance Law §5105 and 11 NYCRR 3.12(b) (see Matter of Progressive Northeastern Ins. Co., 56 AD3d 1111 [3d Dept 2008]). Furthermore, it was not arbitrary and capricious of the arbitrator, upon its own initiative, to render a decision in favor of American upon its determination, following the presentation of FICA's evidence, that FICA did not make out a prima facie case (see Section (d)(2)(I) of Arbitration Forums' NY PIP Rules Revisions effective October 1, 2012).

Under the circumstances presented, it cannot be said that the arbitrator's award was arbitrary and capricious or was unsupported by any reasonable hypothesis (see Hanover Ins. Co. v State Farm Mut. Auto. Ins. Co., 226 AD2d 533, supra; Adams v Allstate Ins. Co., 210 AD2d 319, supra).

Accordingly, it is ordered and adjudged that FICA'S petition to vacate the arbitration award is denied, and the arbitration award is confirmed.

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J.S.C.

Audrey A. Kleffer
Clerk