

<b>Matter of Health Care Subrogation Group for Global Health Ins. v American Intl. Group</b>
2014 NY Slip Op 33366(U)
December 19, 2014
Supreme Court, New York County
Docket Number: 653035/2014
Judge: Cynthia S. Kern
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

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In the Matter of the Application of

HEALTH CARE SUBROGATION GROUP FOR GLOBAL  
HEALTH INSURANCE (GHI),

Petitioner,

Index No. 653035/2014

-against-

**DECISION/ORDER**

AMERICAN INTERNATIONAL GROUP,

Respondent.

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**HON. CYNTHIA S. KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion  
for : \_\_\_\_\_

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affirmation in Opposition .....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

Petitioner Health Care Subrogation Group For Global Health Insurance (“HCSG”) has brought the present petition for an order vacating/modifying the arbitrator’s decision in the arbitration between it and the respondent American International Group (“AIG”). Respondent has brought a cross-motion to confirm the award. As will be explained more fully below, the petition to vacate the arbitrator’s award is granted and this matter is remanded to the same arbitrator to issue a decision which either “contains a dollar amount of an award or a denial of the claim.” HIMP Rules and Regulations, 12 NYCRR § 325-6.14 (a). The cross-motion to confirm the award is denied.

The relevant facts are as follows. On or about April 12, 2011, HCSG submitted a HIMP reimbursement request form to AIG regarding claimant Margaret Rivers. Pursuant to HIMP Rules and Regulations §325-6.4, AIG then had fifty days to either reimburse HCSG's claims or to raise objections to HCSG's claims for reimbursement. HCSG received a timely HIMP objection from AIG. On July 14, HCSG commenced a HIMP arbitration proceeding against AIG before the American Arbitration Association. After conducting an arbitration proceeding, which included testimony and the submission of evidence, the arbitrator issued an arbitration award (the "Award"). The arbitrator ruled that he was dismissing the arbitration "without prejudice and that claimant be allowed to reopen this arbitration upon proof of completion of its claim against [Ms. River's] no-fault carrier." HCSG then submitted an application to the arbitrator in support of modification of the Award, in which it requested that the arbitrator issue a decision which decides the claim. The arbitrator denied HCSG's application for modification of the Award.

Some background regarding the Health Insurance Match Program, otherwise known as HIMP, is required to provide a context for this court's decision. Pursuant to Worker's Compensation Law, a workers compensation carrier is responsible to pay the cost of medical benefits as a result of any work related injury. *See* Worker's Compensation Law § 13 (a). In a situation where a health insurer or its subrogee may have paid a claim on behalf of an insured that should have been paid by the workers compensation carrier, a health insurer may seek reimbursement from the workers compensation carrier. The procedure for seeking this reimbursement is set forth in the HIMP Rules and Regulations § 325. Pursuant to the HIMP regulations, the NYS Compensation Board collects data in order to identify injured employees who make the same claim to both the health insurer and to the workers compensation carrier.

The NYS Compensation Board then provides the data to the health insurer or its subrogee, such as petitioner, who has already paid a claim in order for the health insurer to seek reimbursement from the workers compensation carrier. Based on this data received, the health insurer can initiate a claim for reimbursement for the amount paid by it which may be the responsibility of the workers compensation carrier pursuant to the Worker's Compensation Law. HIMP Rules and Regulations § 325-6.2. A health insurer which requests reimbursement must serve the HIMP-1 form on the carrier before the request for reimbursement can become eligible for arbitration. *Id.* The carrier then has fifty business days after the date the HIMP-1 form is mailed to object to a request for reimbursement. HIMP Rules and Regulations § 325-6.4. If the carrier objects to the claim, the claim then becomes eligible for arbitration as long as certain conditions are met. HIMP Rules and Regulations § 325-6.5. Once an arbitrator is assigned to the matter, the "arbitrator shall determine initially whether the claim is eligible for or subject to mandatory arbitration." HIMP Rules and Regulations § 325-6.13. If the arbitrator determines that the claim is subject to mandatory arbitration, the "arbitrator shall make a decision in writing no later than 30 days after completion of a hearing. The decision shall contain a dollar amount of an award or a denial of the claim, and shall specify the basis of the decision on the form prescribed by the dispute forum for such purpose." HIMP Rules and Regulations § 325-6.14 (a).

A party aggrieved by an arbitration award may move to vacate the award pursuant to Article 75 of the CPLR. Pursuant to CPLR § 7511(b)(iii), the award of an arbitrator shall be vacated if the court finds that "an arbitrator, or agency or person making the award exceeded his power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made...." An arbitrator "exceeds his power under the meaning of the statute

where his award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power." *Matter of Kowaleski*, 16 N.Y.3d 85 (2010).

In the present case, the court finds that the arbitrator has exceeded a specifically enumerated limitation on his power by failing to issue a decision as required by the HIMP Rules and Regulations. The arbitrator only had the authority to issue a decision based on the authority contained in the HIMP Rules and Regulations, which contain clearly articulated rules as to what disputes are eligible for arbitration and how the arbitrations should be conducted. Pursuant to HIMP Rules and Regulations §325-6.14, the arbitrator's decision must either "contain a dollar amount of award or a denial of the claim." There is no other option available to the arbitrator under the Rules and Regulations other than making an actual decision on the claim. The arbitrator exceeded his authority under the HIMP Rules and Regulations by issuing an Award which did not decide the claim one way or the other. It clearly would have been within the authority of the arbitrator to decide that there was no valid claim for reimbursement because the claims were covered by no-fault rather than worker's compensation or decide that the claims were covered by worker's compensation. However, the arbitrator failed to make this determination. As a result, the arbitrator's decision must be vacated and the matter must be remanded to the arbitrator to make a determination whether the claim should be granted or denied. The court further finds that the matter should be remanded to the same arbitrator as he has already held hearings in this matter and reviewed the parties' post-trial submissions and is therefore in the best position to render a decision in this matter. Based on this court's decision, the court need not reach the other arguments raised by petitioner in support of its motion to vacate.

Based on the foregoing, the petition to vacate the arbitrator’s Award is granted and the matter is remanded to the Arbitrator to issue a decision in accordance with the HIMP Rules and Regulations. The cross-motion to confirm the Award is denied. The foregoing constitutes the decision and order of the court. The clerk is directed to enter judgment accordingly.

Dated: 12/19/14.

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CK

J.S.C.

CYNTHIA S. KERN  
J.S.C.