Country-Wide Ins. Co. v TC Acupuncture, P.C.
2015 NY Slip Op 32290(U)
November 24, 2015
Supreme Court, New York County
Docket Number: 652747/2015
Judge: Joan B. Lobis
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6

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Country-Wide Insurance Company,

Petitioner,

Decision and Judgment

-against-

Index No. 652747/2015

TC Acupuncture, P.C. a/a/o Jorge Jaramillo,

Respondent.

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JOAN B. LOBIS, J.S.C.:

This article 75 proceeding arises out of Master Arbitrator Frank Godson's affirmation of Arbitrator Eylan Schulman's award, which granted respondent TC Acupuncture (TC) reimbursement for acupuncture provided to respondent Jorge Jaramillo (Mr. Jaramillo). Petitioner Country-Wide Insurance Company (Country-Wide) seeks an order vacating the Master Arbitrator's decision. Respondents oppose the petition. For the reasons stated below, the petition is denied.

On September 12, 2010, Mr. Jaramillo was involved in a motor vehicle accident for which he received acupuncture from TC. TC sought reimbursement but Country-Wide denied the claim because TC failed to appear for examinations under oath and Mr. Jaramillo failed to appear for independent medical examinations. On November 20, 2014, Arbitrator Schulman heard three related claims made by TC for reimbursement from Country-Wide. Petitioner had until February 2014 to submit its papers but it did not submit anything until October 3, 2014. Arbitrator Schulman concluded that petitioner established a prima facie showing of entitlement to No-Fault benefits and that petitioner's submission was untimely and therefore would not be considered. Petitioner

appealed this award on the grounds that it was irrational, arbitrary, and capricious. On April 8, 2015, Master Arbitrator Godson affirmed the award in its entirety. In his conclusions, Master Arbitrator Godson stated that in his opinion petitioner's arguments in its appeal were unpersuasive.

Petitioner now brings this article 75 proceeding arguing that though its submissions were untimely, Arbitrator Schulman should have considered them based on the merit of its defense and the fact that the late briefs did not prejudice respondents. Petitioner also argues that the master arbitrator's findings were incorrect as a matter of law and that the master arbitrator improperly conducted a de novo review of the facts. Petitioner asserts that, as a result, a final and definite award on the subject matter was not made and the award must be vacated.

In opposition respondents argue that the petition must be denied because petitioner did not comply with the rules of arbitration procedures prior to filing the petition, and because Arbitrator Schulman issued a rational decision within her discretion based on petitioner's violation of arbitration procedures. Additionally respondents argue that petitioner is estopped from re-litigating the issue of whether Arbitrator Schulman's decision is rational as it was already decided. Even if the court considered the evidence, respondents contend, the petition would still be denied on the merits. Respondents state that petitioner improperly raises arguments for the first time in this petition and those arguments should not be considered by the Court. Respondents seek the $2885.84 award of Arbitrator Schulman together with statutory interest, attorney's fees, plus $40 arbitration filing fee, and $130 as awarded by the Master Arbitrator, and costs and fees pursuant to CPLR in responding to this petition.

The scope of judicial review of arbitration awards is narrowly limited to whether the award "is violative of a strong public policy, is totally irrational, or exceeds a specifically enumerated limitation on the arbitrator's power." Kaminsky v. Segura, 26 A.D.3d 188, 189 (1st Dep't 2006). It does not include errors of law or fact. See Colletti v. Mesh, 23 A.D.2d 245, 248 (1st Dep't 1965). The arbitrator has great discretion and "[u]nless the arbitration agreement provides otherwise, the arbitrator is not bound by principles of substantive law or rules of evidence." Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Benjamin, 1 A.D.3d 39, 43 (1st Dep't 2003). Courts will not interfere if there is "even a barely colorable justification for the outcome reached." Wien & Malkin LLP v. Helmsley-Spear, Inc., 6 N.Y.3d 471, cert. dismissed, 548 U.S. 940 (2006).

Neither Arbitrator Schulman nor the master arbitrator's awards are violative of public policy, irrational, or exceed a specifically enumerated limitation on their power. Contrary to petitioner's contention, it was squarely within the Arbitrator Schulman's discretion to decline to consider petitioner's late submissions and additionally she provided a detailed explanation for her decision. Though the master arbitrator discussed the facts in his findings, he also stated the basis of Arbitrator Schulman's decision and affirmed the decision in its entirety, constituting a final and definite award on the subject matter. Further, the Court will not reach errors of law or fact when reviewing the master arbitrator's findings. The Court has considered the remainder of the parties' arguments and they do not change the result.

It is therefore

ADJUDGED that the petition is denied and the proceeding is dismissed, with costs and disbursements to respondent.

Dated: Nov. 24, 2015

ENTER:

JOAN B. LOBIS, J.S.C.