

**Matter of Fast Care Med. Diagnostics, PLLC/PV v
Government Empls. Ins. Co.**

2015 NY Slip Op 32714(U)

August 5, 2015

Supreme Court, Queens County

Docket Number: 703194/2015

Judge: Robert J. McDonald

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This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK
CIVIL TERM - IAS PART 34 - QUEENS COUNTY
25-10 COURT SQUARE, LONG ISLAND CITY, N.Y. 11101

P R E S E N T : HON. ROBERT J. MCDONALD
Justice

In the Matter of the Application of
FAST CARE MEDICAL DIAGNOSTICS, PLLC/PV
Petitioner,
- against -
GOVERNMENT EMPLOYEES INS. CO.,
Respondent,

Index No.: 703194/2015
Motion Date: 05/20/15
Motion No.: 55
Motion Seq.: 1

For An Order Vacating An Arbitration
Award Pursuant To CPLR Article 75

FILED
AUG -7 2015
COUNTY CLERK
QUEENS COUNTY

The following papers numbered 1 to 7 read on this petition for an
order vacating a No-Fault Arbitration Award pursuant to CPLR
\$7511.

Papers
Numbered

Notice of Petition-Affirmation-Exhibits.....1 - 4
Respondent's Answer and Opposition.....5
Petitioner's Reply.....6 - 7

Petitioner commenced this Article 75 proceeding for an
order, pursuant to CPLR \$7511, vacating a Master Arbitration
Award of arbitrator Frank G. Godson, dated January 16, 2015,
which affirmed the arbitration award rendered by arbitrator Donna
Ferrara. Petitioner requests that the Court compel an arbitration
hearing on the issue of medical necessity, and also seeks the sum
of \$2,060.00 in attorney's fees, filing fees, costs and
disbursements.

These proceedings arose out of a motor vehicle accident that
occurred on or about March 7, 2013. Petitioner provided medical
services to an infant, "PV", from April 4, 2013 through May 1,

2013. Petitioner sought reimbursement from respondent, and submitted proofs of claim to respondent totaling \$1,758.40. Respondent denied these proofs of claim based upon lack of medical necessity.

Petitioner filed for arbitration against respondent for first party no-fault benefits in the amount of \$1,758.40. On October 10, 2014, arbitrator Donna Ferrara issued a decision in which she denied petitioner's claim in its entirety without prejudice because petitioner brought the arbitration involving an infant without first obtaining a court order as is required by CPLR §1209.

Petitioner then filed for a Master Arbitration Appeal of this Award. On January 16, 2015, Master Arbitrator Frank G. Godson affirmed the lower Award of Donna Ferrara and found, *inter alia*, that "the claim should be brought by applicant as assignee of the parent."

Petitioner argues that the Master Arbitrator's decision is arbitrary and capricious as the form adopted by the Superintendent of Insurance does not allow an application for No-Fault arbitration to specify the assignor. Petitioner further argues that the lower Award dismissing petitioner's application for No-Fault benefits for its failure to obtain a court order pursuant to CPLR §1209 was arbitrary and capricious because the infant's right to the claim ended when his mother executed an assignment of his No-Fault benefits. Thus, the infant was not a party to the proceeding, and petitioner was not required to obtain a court order pursuant to CPLR §1209.

Respondent argues that the Master Arbitrator acted properly in affirming the Award as he did not conduct a *de novo* review of the facts of the case and because his Award was in accordance with CPLR §1209. Respondent further argues that since arbitrations concerning No-Fault benefits were not specifically exempt from CPLR §1209, petitioner should have complied with the statutory requirement.

Pursuant to CPLR §7511(b)(1), an arbitration award may be vacated on application of a party who participated in the arbitration only if the rights of that party were prejudiced by (1) corruption, fraud, or misconduct in procuring the award; (2) partiality of a supposedly neutral arbitrator; (3) the arbitrator exceeding his powers so that no final and definite award was made; or (4) failure to follow procedures provided by CPLR article 75 (see Matter of IBK Enters., Inc. v Onekey, LLC, 70 AD3d 948 [2d Dept. 2010]; Wicks Constr., Inc. v. Green, 295 AD2d

527 [2d Dept. 2002]). Additionally, an arbitration award may be vacated if it is arbitrary and capricious, irrational or without plausible basis, (see Steinauer v N.Y. Central Mutual Fire Ins. Co., 272 AD2d 771, 772 [3rd Dept. 2000]).

CPLR §1209 provides, in pertinent part, that "a controversy involving an infant... shall not be submitted to arbitration except pursuant to court order made upon application of the representative of such infant...". The Second Department has found CPLR §1209 to be applicable only where the infant is actually a party to the action (see Goldberg v Goldberg, 25 AD2d 670 [2nd Dept. 1966]; Schneider v Schneider, 24 AD2d 768 [2nd Dept. 1965]).

Here, the infant assigned the No-Fault benefits to petitioner, and as such, divested all control and right to the claim (see Cardtronics, LP v St. Nicholas Beverage Discount Ctr., Inc., 8 AD3d 419, 420 [2nd Dept. 2004]; Fairchild Hiller Corp. V McDonnell Douglas Corp., 28 NY2d 325, 330-31 [1971]). Respondent failed to object to the validity of the assignment in a timely denial of claim form, and therefore any alleged issues regarding the assignment are waived (see Hosp. for Joint Diseases v. Travelers Prop. Cas. Ins. Co., 9 N.Y.3d 312 [2007]). Accordingly, the infant was no longer a party to the action and petitioner assignee was the proper party in interest (see Cardtronics, LP at 420; see also Jean v Joseph, 41AD3d 657, 658 [2nd Dept. 2007]). Therefore, CPLR §1209 does not apply.

Petitioner's request for the sum of \$2,060.00 in attorney's fees, filing fees, costs and disbursements is denied at this time.

Accordingly, based upon the foregoing, it is hereby

ORDERED AND ADJUDGED, that petitioner's application is granted to the extent that award rendered by arbitrator Donna Ferrara, dated October 10, 2014, is vacated; the award of master arbitrator Frank G. Godson, dated January 16, 2015, is vacated; and an arbitration hearing on the issue of medical necessity shall be held.

Dated: Long Island City, N.Y.
August 5, 2015

FILED
AUG -7 2015
COUNTY CLERK
QUEENS COUNTY



ROBERT J. MCDONALD
J.S.C.