Country-Wide Ins. Co. v Allbody Healing Supplies, LLC
2018 NY Slip Op 32622(U)
October 9, 2018
Supreme Court, New York County
Docket Number: 653376/2018
Judge: Carol R. Edmead

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 35

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COUNTRY-WIDE INSURANCE COMPANY,

Petitioner,

-against-

ALLBODY HEALING SUPPLIES, LLC a/a/o ANA URBINA,

Respondent.

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DECISION/ORDER

Index no. 653376/2018

Mot. Seq. No. 001

HON. CAROL R. EDMEAD, J.S.C.:

MEMORANDUM DECISION

In this Article 75 action, Petitioner Country-Wide Insurance Company (Petitioner) moves pursuant to CPLR 7511(b)(1)(iii) to vacate a no-fault arbitration award issued by a lower arbitrator and affirmed by a master arbitrator in favor of Respondent Allbody Healing Supplies, LLC (Respondent) a/a/o Ana Urbina (Urbina). Respondent oppose the motion.[1] seeks an order affirming the award of the master arbitrator. For the reasons set forth below, the Court denies the Petition and confirms the award.

Ana Urbina, the Respondent's assignee, was injured in a motor vehicle accident on March 1, 2016 (Martinaj Aff. Exs., B, C). Urbina was a driver in the vehicle insured by Petitioner (*id.*). Following the accident, Urbina allegedly sustained injuries and thereafter rented durable medical supplies from Respondent. According to the Arbitration Award, Urbina underwent right knee arthroscopic surgery and was prescribed continuous passive motion (CPM) unit and a cold therapy unit (CTU) (medical devices) from July 13, 2016 through August 23,

[1] In its Verified Answer, but not in opposition, Respondents seek an order affirming the master arbitrator's award, as well as statutory interest, costs and disbursements, and attorney's fees.

2016 (*id.*, Ex. B, ¶3). Respondent thereafter sought reimbursement of the cost for the rental of the units. Petitioner denied Respondent's claim based on an Independent Medical Exam (IME) that effectively terminated no-fault benefits. The parties then proceeded, pursuant to the insurance agreement, to arbitration before arbitrator Antonietta Russo (the Lower Arbitrator) on March 5, 2018, to determine whether the medical devices were medically unnecessary (*id.*, ¶3.1). The Lower Arbitrator found in favor of the Respondent herein and granted the claim.

The Lower Arbitrator found that Petitioner met its *prima facie* burden by demonstrating that the subject medical devices were unnecessary. Petitioner submitted two IME reports, including an orthopedic report by Dorothy Scarpinato, M.D., which indicated that any condition related to the accident as of the date of the orthopedic IME had fully resolved and that the subject injury was pre-existing. Petitioner also argued that Urbina had a history of traumatic injuries and that the subject injury was the result of a pre-existing condition.

In finding in favor of Respondent, the Lower Arbitrator determined that submissions by Respondent, including the rebuttal by Dr. Stuart Springer, Urbina's treating physician, and Urbina's medical records, rebutted the Petitioner's showing and established the medical necessity of the devices.

Ultimately, the Lower Arbitrator was unpersuaded that the Respondent's that Urbina's injury was preexisting. Citing to *Mount Sinai Hosp. v. Triboro Coach Inc.* (263 A.D.2d 11 [2d Dept 1999]), the Lower Arbitrator held that Petitioner failed to meet its burden "[t]o demonstrate by clear evidence that the patient's condition or injury was not caused or exacerbated to any degree by the underlying automobile accident but was, rather, completely pre-existing . . . ." (Martinaj Aff. Ex, B, ¶4). The Lower Arbitrator further held that Petitioner "has not shown how this motor vehicle accident has not exacerbated any prior right knee injury at all" (*id.*).

Specifically, the Lower Arbitrator noted that the medical records did not indicate prior or subsequent injuries to Urbina's right knee (*id.*).

The Master Arbitrator, Vincent M. Esposito, confirmed the Lower Arbitrator's award. The Master Arbitrator Award indicates that in making her determination, the Lower Arbitrator "made specific references to [Dr.Scarpinato's] report and was simply more impressed with the documentation submitted on behalf of the provider, which included a rebuttal by Dr. [] Springer, the treating physician" (Martinaj Aff. Ex, C, 1). The Master Arbitrator also found that the record supported the Lower Arbitrator's determination that "[Petitioner] did not prove that there was no connection with the motor vehicle accident and the knee condition" (*id.*).

"Judicial review of an arbitration award is narrowly circumscribed, and vacatur limited to instances where the award is violative of a strong public policy, is irrational, or clearly exceeds a specific limitation on an arbitrator's power" (*Matter of New York City Tr. Auth. v Phillips*, 162 AD3d 93 [1st Dept 2018] [internal citation and quotation marks omitted]). Here, Petitioner does not argue that the subject awards violated a strong public policy or that either of the arbitrators exceeded limitations on their power.

As to irrationality, the Lower Arbitrator and the Master Arbitrator evaluated the evidence and made rational determinations. Specifically, the Lower Arbitrator determined that Petitioner's evidence was insufficient to demonstrate that Urbina's claimed injuries lacked a nexus to the subject accident, *i.e.*, that the medical devices were related to a pre-existing injury (*see Mount Sinai Hosp. v. Triboro Coach Inc.*, 263 A.D.2d 11, 19–20 [2d Dept 1999] [insurer "[h]as the burden to come forward with proof in admissible form to establish 'the fact' or the evidentiary 'foundation for its belief' that the patient's treated condition was unrelated to his or her automobile accident"], quoting *Cent. Gen. Hosp. v. Chubb Grp. of Ins. Companies*, 90 N.Y.2d

195, 201 [1997]; *see Kingsbrook Jewish Med. Ctr. v. Allstate Ins. Co.*, 61 A.D.3d 13, 21 [2d dept 2009]). Moreover, the Master Arbitrator Award demonstrated that the Lower Arbitrator reviewed the facts and law underpinning the initial award. As both arbitral awards rationally applied the facts to the law, both were rational.

CONCLUSION

Accordingly, it is hereby

ORDERED that the Petition of Country-Wide Insurance Company (Petitioner) is denied in its entirety; and it is further

ORDERED that the Clerk may enter judgment accordingly, upon presentation of a proposed judgment consistent with this opinion; and it is further

ORDERED that Petitioner shall, within 20 days of entry, serve a copy of this Order with notice of entry upon all parties.

Dated: October 9, 2018