

MVAIC v Elemam Physician, PC

2018 NY Slip Op 32732(U)

October 24, 2018

Supreme Court, New York County

Docket Number: 452876/2017

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JOHN J. KELLEY PART IAS MOTION 56EFM

Justice

-----X INDEX NO. 452876/2017

MVAIC

MOTION DATE N/A

Petitioner,

MOTION SEQ. NO. 001

- v -

ELEMAM PHYSICIAN, PC A/A/O FANNY OVIEDO,

Respondent.

DECISION AND ORDER

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 11, 12, 13, 14, 15 were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD

The petitioner brings this application, pursuant to CPLR §7511, to vacate and set aside a master arbitrator's and a lower arbitrator's No-Fault award. The petitioner argues that the arbitrators disregarded the law and improperly failed to consider that the respondent medical provider's arbitration claim was filed after the expiration of the statute of limitations. The arbitrators found that CPLR §3018 required the petitioner to plead the statute of limitations as an affirmative defense. Despite there being no formal pleadings in a No-Fault arbitration proceeding, the arbitrators ruled the petitioner waived its statute of limitations defense because it did not give notice of it before the arbitration hearing. The petitioner now argues that the arbitrators' ruling was arbitrary and capricious and should be overturned.

It is well settled that an arbitration award will not be vacated, even when the court finds the arbitrator misapplies substantive rules of law, unless the award violates a strong public policy, exceeds a specifically enumerated limitation on the arbitrator's powers, or is totally irrational (see Matter of Silverman [Benmor Coats], 61 NY2d 299, 307-309 [1984]; Lentine v

Fundaro, 19 NY2d 382, 385 [1971]; *Intergrated Sales, Inc. v Maxell Corporation of America*, 94 AD2d 221, 225 [1st Dept 1983]). Where, as here, the arbitration was compulsory, judicial review under Article 75 is slightly broader, requiring that the award be consistent with due process, supported by adequate evidence in the record, and not arbitrary and capricious (*see Motor Veh. Mfrs. Assn. of U.S. v State of New York*, 75 NY2d 175, 186 [1990]; *New York Central Mutual Fire Ins. Co. v Nichols*, 192 AD2d 1131 [4th Dept 1993]). A decision by an arbitrator to exercise discretion in permitting or not permitting the imposition of a statute of limitations defense is subject to judicial review under an arbitrary and capricious standard (*see Matter of Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214, 223 [1996]).

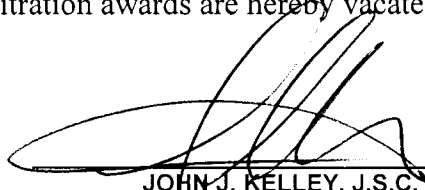
In this case, it is clear that the arbitration action was commenced almost two and a half years after the limitations period expired. The petitioner argues that the arbitrators acted arbitrarily and improperly applied procedural and pleading rules that only apply to litigation, not to arbitration. The Court agrees. The arbitrators invoked CPLR §308, which is a procedural rule that provides that a statute of limitations defense must be raised as an affirmative defense in a responsive pleading; however, unlike a plenary action under the CPLR, arbitrations are relatively informal proceedings, and, unless the rules governing the arbitration provide otherwise, they do not utilize formal pleadings, such as an answer. With certain exceptions not relevant here, procedural rules such as pleading requirements or evidentiary rules are inapplicable to arbitration (*see Auto One Ins. Co. v Hillside Chiropractic, P.C.*, 126 AD3d 423, 424 [1st Dept 2015]; *American Independent Ins. Co. v Art of Healing Medicine, P.C.*, 104 AD3d 76, 763 [2d Dept 2013]). In this No-Fault arbitration, the defendant was not required to serve an answer. Accordingly, there is nothing improper about asserting a defense of statute of limitations for the first time at the commencement of an arbitration hearing (*see Application of Finklestein*, 17

AD2d 137, 140 [1st Dept 1962]; *State Farm Insurance Company v Nationwide Mutual Insurance Company*, 18 Misc.3d 137(A) [App Term, 2d Dept 2008]).

Contrary to the respondent’s contentions, the statute of limitations defense is not waived if it is not raised prior to the commencement of an arbitration proceeding. Article 75 is explicit on this point. Pursuant to the CPLR §§ 7502(b) and 7503, there are two methods that a respondent can utilize to raise a statute of limitations defense to an arbitration. CPLR §7503 allows a respondent to file an application in Supreme Court seeking a permanent stay of arbitration on the ground that the applicable statute of limitations had expired. While the petitioner could have filed such an application here, it was not required to do so. CPLR § 7502(b) specifically provides that the failure to raise the statute of limitations defense in an application seeking a stay of arbitration “shall not preclude its assertion before the arbitrators.” While the statute gives the arbitrator discretion to apply that bar, that discretion is not absolute and, as set forth above, is subject to review by this court under an arbitrary and capricious standard. By insisting that the petitioner needed to assert the statute of limitations defense in advance of the arbitration, the arbitrators essentially punished the petitioner for exercising an option it had every right to utilize under the CPLR. By imposing procedural requirements on the petitioner that are not mandated by the arbitration agreement or by the CPLR and are contrary to the established notions of arbitration as an informal proceeding, the arbitrators acted in an arbitrary and capricious manner.

Accordingly, the petition is granted, and the arbitration awards are hereby vacated.

10/24/2018
DATE


JOHN J. KELLEY, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	

HON. JOHN J. KELLEY J.S.C.

APPLICATION:

SETTLE ORDER

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SUBMIT ORDER

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CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE