Country-Wide Ins. Co. v Kolb Radiology P.C.
2020 NY Slip Op 33338(U)
October 7, 2020
Supreme Court, New York County
Docket Number: 651336/2020
Judge: Eileen A. Rakower

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER **PART 6**
Justice

INDEX NO. 651336/2020

COUNTRY-WIDE INSURANCE COMPANY, **MOTION DATE**
MOTION SEQ. NO. 1
MOTION CAL. NO.

Petitioner,

- against-

KOLB RADIOLOGY P.C. a/a/o MIRKA TEJADA,

Respondent.

The following papers, numbered 1 to _____ were read on this motion for/to

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answer — Affidavits — Exhibits _____	
Replying Affidavits	

Cross-Motion: Yes x No

Petitioner Country-Wide Insurance Company ("Petitioner" or "CWI") brings this proceeding pursuant to CPLR § 7511 to vacate a No-Fault Master Arbitrator's decision dated December 11, 2019 on the grounds that the lower arbitrator exceeded his/her authority, or so imperfectly executed it, that a final an definite award upon the subject matter submitted was not made, and the Master Arbitrator erred in affirming the award. There is no opposition.

Petitioner asserts that the alleged accident occurred on March 2, 2016. Petitioner argues that "Respondent claims that it first erroneously submitted the March 30, 2016, date of service bill to Geico due to its belief that Geico insured the vehicle." Petitioner asserts that it never received the bill, and was not aware of the claim until February 17, 2019, after receiving a letter from Respondent. Petitioner asserts that "Respondent submitted a Notice of Incomplete Submission of Verification Material for No-fault Claim sent to them by CWI, noting that the bill in dispute was not submitted to CWI and that the claim would be handled accordingly upon receipt of complete no fault bills with CPT codes and tax ID of provider, and proof of timely submission." Additionally, Petitioner submitted the Affidavit of Jessica Mena, an employee with Petitioner as a No-Fault Litigation/Arbitration Supervisor. Ms. Mena states that Petitioner never received a bill from Respondent in the amount of $959.61 for radiology exam services performed on Mirka Tejada on March 30, 2016.

Petitioner asserts that Respondent's failure to submit written notice of the alleged healthcare services provided within forty five days, or written notice setting forth reasonable justification for failing to comply with such time limitation, permits the insurer to deny No-fault benefits. Petitioner argues that lower arbitrator's award erred in its examination of the Proof of Mailing in which the bill was sent to Geico rather than Petitioner, revealing that Petitioner never received a bill from respondent Kolb Radiology.

Legal Standards

Pursuant to CPLR § 7511(b), the grounds for vacating an arbitration award are "(i) corruption, fraud or misconduct in procuring the award; … (ii) partiality of an arbitrator appointed as a neutral, except where the award was by confession; … (iii) 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; [and] (iv) failure to follow the procedure of this article, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection." CPLR § 7511(b).

Generally, an arbitration award made after all parties have participated will not be overturned merely because the arbitrator committed an error of fact or of law. *Motor Vehicle Acc. Indemnification Corp. v. Aetna Casualty & Surety Co.*, 89 N.Y.2d 214, 223 (1996). "[W]here the arbitration is pursuant to the voluntary agreement of the parties, in the absence of proof of fraud, corruption, or other misconduct, the arbitrator's determination on issues of law as well as fact is conclusive." *Id.*

Where arbitration is compulsory, however, the arbitrator's determination is subject to "closer judicial scrutiny." *See MVAIC v. Aetna Casualty & Surety Co.*, 89 N.Y.2d at 223; *Mount St. Mary's Hosp. of Niagara Falls v. Catherwood*, 26 N.Y.2d 493, 508 (1970) (explaining that CPLR article 75 "includes review in the case of compulsory arbitration (but only in such case) of whether the award is supported by evidence or other basis in reason, as may be appropriate, and appearing in the record"). An award in a compulsory arbitration proceeding "must have evidentiary support and cannot be arbitrary or capricious" to be upheld. *MVAIC v. Aetna Cas. & Surety Co.*, 89 N.Y.2d at 223.

To establish that an arbitrator has "exceeded his power" under CPLR 7511, a party must show that the award "violates a strong public policy, is irrational or

clearly exceeds a specifically enumerated limitation on an arbitrator's power" under CPLR 7511(b)(1). *New York City Tr. Auth. v Transp. Workers' Union of Am.*, Local 100, AFL-CIO, 6 NY3d 332, 336 [2005].

"The primary goals of New York's no-fault automobile insurance system are to ensure prompt compensation for losses incurred by accident victims without regard to fault or negligence, to reduce the burden on the courts and to provide substantial premium savings to New York motorists." *New York and Presbyt. Hosp. v. Country-Wide Ins. Co.*, 17 NY3d 586, 589 [2011] (internal citation omitted). "In furtherance of these objectives, the Superintendent of Insurance has adopted regulations implementing the No–Fault Law (Insurance Law art 51), including circumscribed time frames for claim procedures." *Id.* (internal citation omitted).

11 NYCRR 65–1.1, the mandatory personal injury protection endorsement for motor vehicle liability insurance policies, provides in relevant part:

> Proof of Claim. Medical, Work Loss, and Other Necessary Expenses. In the case of a claim for health service expenses, the eligible injured person or that person's assignee or representative shall submit written proof of claim to the Company, including full particulars of the nature and extent of the injuries and treatment received and contemplated, as soon as reasonably practicable but, in no event later than 45 days after the date services are rendered…

Discussion

Here, the record establishes that Respondent sent the March 30, 2016 date of service bill to Geico due to its belief that Geico insured the vehicle. Ms. Mena states that Petitioner never received a bill from Respondent in the amount of $959.61 for radiology exam services performed on Mirka Tejada on March 30, 2016. The alleged accident occurred March 2, 2016. Petitioner was not aware of the claim until February 17, 2019, after receiving a letter from Respondent. Petitioner did not receive notice from Respondent, which included the "full particulars of the nature and extent of the injuries and treatment received and contemplated, as soon as reasonably practicable but, in no event later than 45 days after the date services are rendered…" *See* 11 NYCRR 65–1.1. Petitioner has demonstrated that lower

arbitrator erred by rendering an award where proper notice was not given pursuant to 11 NYCRR 65–1.1.

Wherefore it is hereby

ORDERED that the Petition is granted without opposition; and it is

ORDERED and ADJUDGED that the lower arbitrator's award dated September 2, 2019 and the No-Fault Master Arbitrator's decision dated December 11, 2019 referenced in the Petition are vacated.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: October 7, 2020

ENTER: 
J.S.C.

HON. EILEEN A. RAKOWER

Check one: X FINAL DISPOSITION NON-FINAL DISPOSITION