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

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

Justice

COUNTRY-WIDE INSURANCE COMPANY,

Petitioner(s),

- against-

LOCKWOOD MEDICAL P.C. a/a/o EMERLI RAMOS,

Respondent(s).

INDEX NO. 656195/2020

MOTION DATE

MOTION SEQ. NO. 1

MOTION CAL. NO.

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 ("CWI") commenced this proceeding by submitting a Petition "to vacate a No-Fault Master Arbitrator's decision, dated August 13, 2020, on the basis that the lower arbitrator exceeded his/her powers, and the award was so imperfectly executed that a final and definite award upon the subject matter submitted was not made, and further, that the Master Arbitrator erred in affirming the decision." Respondent Lockwood Medical P.C. a/a/o Emeli Ramos ("Respondent" or "Lockwood") does not oppose the Petition.

Factual Background and Procedural History

This matter arises from a motor vehicle accident that occurred on October 12, 2017, involving a vehicle registered in New York State and insured by CWI. Emili Ramos ("Claimant") was the driver of the vehicle insured by CWI that was struck by another vehicle. Claimant allegedly sustained injuries in the accident and received medical services from Lockwood. Lockwood thereafter sought reimbursement from CWI for the medical services it had provided to Claimant. CWI denied the claim for reimbursement based on Claimant's failure to appear for two scheduled examinations under oath ("EUO").

This matter proceeded to arbitration. On April 27, 2020, Arbitrator Eylan Schulman (hereinafter "the lower Arbitrator") held a hearing. By decision dated May 6, 2020, the lower Arbitrator found that "the EUO demands at issue were issued in an unreasonably late fashion since the initial demand was sent more than 30 days after [CWI's] receipt of the claim." The lower Arbitrator wrote, "Accordingly, I find [CWI's] EUO request untimely and I am constrained to not consider the merits of Respondent's defense." The lower Arbitrator held that Lockwood was entitled to reimbursement in the amount of $405.09. CWI appealed the lower Arbitrator's decision to the Master Arbitrator.

On August 13, 2020, the Master Arbitrator held that "in view of the entirety of the record under review and the case law cited herein, the decision by the no-fault arbitrator to reject respondent's no-show EUO defense in view of [CWI's] failure to schedule claimant's EUO proceedings within 30 days of receipt of applicant's bills was rational, neither arbitrary nor capricious, and not incorrect as a matter of law," and "there is no valid reason to vacate or nullify the award in question."

CWI claims in the Petition that "the Arbitrator exceeded his power because a Supreme Court decision takes precedence over the arbitration decision making the arbitration a nullity." CWI attaches as Exhibit E a copy of the default judgment entered against Claimant dated June 24, 2019 rendered by Justice Louis L. Nock in the separate action commenced by CWI under Index No. 656106/2018.

Legal Standard

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."

Where parties submit to "compulsory arbitration involving no-fault insurance, the standard of review is whether the award is supported by evidence or other basis in reason." *Matter of Miller v Elrac, LLC*, 170 AD 3d 436, 436-437(1st

Dept 2019). Further, the power of the master arbitrator to review factual and procedural issues is limited to "whether the arbitrator acted in a manner that was arbitrary and capricious, irrational or without a plausible basis." *Petrofsky v. Allstate Ins. Co.*, 54 NY2d 207, 212 (1981).

The doctrine of collateral estoppel precludes a party "from relitigating in a subsequent action an issue clearly raised and decided against that party in a prior action." *Ji Sun Jennifer Kim v Goldberg, Weprin, Finkel, Goldstein, LLP*, 120 AD3d 18, 23 (1st Dept 2014).

"An arbitration award may be vacated as barred by the preclusive effect of a judgment or settlement entered in prior litigation." *Matter of Tokio Mar. & Fire Ins. Co. v Allstate Ins. Co.*, 8 AD3d 492 (2d Dept 2004). A "Supreme Court's order is a conclusive final determination, notwithstanding that it was entered on default." *Best Touch PT, P.C. v Am. Tr. Ins. Co.*, 49 Misc 3d 154(A) (App Term 2015).

"While the preclusive effect of a pre-arbitration judicial decision may be sufficient to vacate an arbitral award… a post-arbitration judicial determination concerning the insurer's liability is not one of the limited grounds for vacating an arbitration award…" *Hereford Ins. Co. v Iconic Wellness Surgical Servs., LLC*, 2019 NY Slip Op 50801(U) (Sup. Ct., App. Term, 1st Dept 2019) (internal citation and quotation marks omitted).

Discussion

The motion to vacate the Award and the Master Arbitration decision is denied.

The referenced default judgment decision dated June 24, 2019 awarded the entry of default and declaratory judgment as to the claims of other medical providers, not Lockwood. Rather, the decision states, "Plaintiff is not, however, entitled to a stay as it pertains to defendants Longevity Medical Supply, Inc., Kazu Acupuncture, P.C., Theramove Physical Therapy & Rehabilitation PC, Rapid Imaging Corp, and **Lockwood Medical PC**, who have each timely appeared in this action and asserted affirmative defenses, including defenses regarding the verification and processing of their claims and Plaintiff's adherence to applicable

no-fault regulations, which require strict compliance." (emphasis added). Further, the ordered section of the decision states that it is "ADJUDGED and DECLARED that all arbitrations, lawsuits and enforcement of awards or judgments in connection with the October 12, 2017, Claim No. 000331369-002, Policy: ES9730570 17 referenced in the complaint involving EMELI RAMOS are permanently stayed, except those pertaining to the claims of defendants Longevity Medical Supply, Inc., Kazu Acupuncture, P.C., Theramove Physical Therapy & Rehabilitation PC, Rapid Imaging Corp, **and Lockwood Medical PC**." (emphasis added).

Wherefore, it is hereby

ORDERED that the Petition to vacate the Award and Master Arbitration Award is denied.

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

Dated: January 12, 2021

ENTER: _____ J.S.C.

HON. EILEEN A. RAKOWER

Check one: X FINAL DISPOSITION NON-FINAL DISPOSITION