

**Country-Wide Ins. Co. v Advantage Med
Innovations, Inc.**

2021 NY Slip Op 30418(U)

February 11, 2021

Supreme Court, New York County

Docket Number: 653866/2020

Judge: Eileen A. Rakower

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

PRESENT: Hon. EILEEN A. RAKOWER

PART 6

Justice

**COUNTRY-WIDE INSURANCE COMPANY,
Petitioner,**

**INDEX NO. 653866/2020
MOTION DATE
MOTION SEQ. NO. 1
MOTION CAL. NO.**

- against-

**ADVANTAGE MED INNOVATIONS, INC.
a/a/o JOSE MARTE,**

Respondent(s).

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: X Yes No

Petitioner Country-Wide Insurance Company (“CWI”) commenced this proceeding by submitting a Petition seeking an Order vacating a lower Arbitrator’s Award dated February 17, 2020 (“the Award”) and a Master Arbitration Award dated May 27, 2020.

Respondent Advantage Med Innovations, Inc. a/a/o Jose Marte (“Respondent”) submits a Cross-Petition for an Order confirming the arbitration awards and for attorney’s fees. CWI opposes the Cross-Petition.

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.”

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 NY2d 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 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*, 2019 NY Slip Op 01544 (1st Dept 2019). “This standard has been interpreted to mean that the relevant test is whether the evidence is sufficient, as a matter of law, to support the determination of the arbitrator, is rational and is not arbitrary and capricious.” *Id.* 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).

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 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). To successfully invoke the doctrine, “the issue in the second action must be identical to an issue which was raised, necessarily decided and material in the first action,” and “the party to be precluded must have had a full and fair opportunity to litigate the issue in the earlier action.” *Id.* at 34. “The doctrine of collateral estoppel is applicable to arbitration awards, including those rendered in disputes over no-fault bene(its, and will bar relitigation of the same claim or issue.” *Country-Wide Ins. Co. v Axial Chiropractic, P.C.*, 2016 WL 6139812, No. 652969/2016 (N.Y. Sup Ct, New York County 2016) (citing *Matter*

of *Ranni*, 58 NY2d 714, 717 [1982]; *Monroe v. Providence Washington Ins. Co.*, 126 AD2d 929 [3d Dept 1987]).

Discussion

CWI fails to set forth a basis for this Court to disturb the lower Arbitrator's Award and the Master Arbitration Award. After reviewing the evidence and submissions, the lower Arbitrator concluded that the "[t]he seminal issue presented herein – whether the left shoulder arthroscopy surgery and related services provided were medically necessary and causally related to the accident - is identical to the issue(s) considered" and previously decided in another arbitration proceeding where CWI had "a full and fair opportunity to contest the determination said to be dispositive of the instant controversy." The lower Arbitrator concluded that the doctrines of res judicata and collateral estoppel applied to preclude CWI from raising the same defense based on the same medical affidavit and facts. The Court finds no basis to disturb this finding. Further, the Master Arbitrator correctly determined that the lower Arbitrator did not exceed her powers and determined that the decision was rational and neither arbitrary, capricious nor incorrect as a matter of law. *Petrofsky*, 54 NY2d at 209.

Based upon the foregoing, the Petition for an order vacating the lower Arbitrator's Award dated February 17, 2020 and affirmed on May 27, 2020 by the Master Arbitrator is denied. The Cross-Petition is granted and the *Advantage Med Innovations, Inc. a/a/o Jose Marte v. Country-Wide Insurance* (AAA Case No.: 17-18-1103-7190) hereby is confirmed in all respects.

Respondent requests an award of attorney's fees pursuant to 11 NYCRR 654-4.10(j)(4). Respondent's attorney submits an affirmation detailing the hours incurred in opposing the Petition and in the preparation of the Cross-Petition. Respondent's counsel avers that his office spent 2 hours of legal work. Respondent seeks attorney's fees in the amount of \$800 pursuant to counsel's billing rate of \$400 per hour.

Respondent is entitled to attorney's fees. In *Matter of Country-Wide Ins. Co. v. Bay Needle Care Acupuncture, P.C.*, 162 AD3d 407 [1st Dept 2018], the First Department held that the "Supreme Court has authority to award attorney's fees as this is an appeal from a master arbitration award pursuant to 11 NYCRR 65-4.10(j)(4), which, in pertinent part, provides: 'The attorney's fee for services

rendered in connection with . . . a court appeal from a master arbitration award and any further appeals, shall be fixed by the court adjudicating the matter.”

Wherefore, it is hereby,

ORDERED that the Petition to vacate the lower Arbitrator’s Award dated February 17, 2020 and the Master Arbitration Award dated May 27, 2020 is denied; and it is further

ORDERED the Cross-Petition of Respondent Advantage Med Innovations, Inc. a/a/o Jose Marte is granted; and it is further

ORDERED that the arbitration award in the matter of *Advantage Med Innovations, Inc. a/a/o Jose Marte v. Country-Wide Insurance* (AAA Case No.: 17-18-1103-7190) is hereby confirmed in all respects; and it is further

ORDERED that the Clerk shall enter a judgment in favor of Respondent Advantage Med Innovations, Inc. a/a/o Jose Marte against Petitioner Country-Wide Insurance Company as follows: (a) \$1,332.00 plus interest from August 28, 2018 at the rate of two per cent (2%) per month, together with (b) attorney’s fees in accordance with 11 N.Y.C.R.R. §65-4.6(d); together with (c) forty dollars (\$40) for the fees paid to AAA unless the fee was previously returned pursuant to an earlier award; and it is further

ORDERED that Respondent’s application for attorney’s fees in the amount of \$800.00 is granted; and it is further

ORDERED that Respondent shall serve a copy of this order, along with notice of entry, on all parties within 10 days of entry.

This constitutes the decision and order of the Court. All other relief requested is denied.

ENTER:



J.S.C.

HON. EILEEN A. RAKOWER

Dated: February 11, 2021

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION