

**Country-Wide Ins. Co. v Comfort Choice  
Chiropractic P.C.**

2022 NY Slip Op 32946(U)

August 31, 2022

Supreme Court, New York County

Docket Number: Index No. 656365/2022

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

COUNTRY-WIDE INSURANCE COMPANY

Petitioner,

- v -

COMFORT CHOICE CHIROPRACTIC P.C.,

Respondent.

-----X

INDEX NO. 656365/2022

MOTION DATE 06/08/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Petitioner, Country-Wide Insurance Company ("CWI"), seeks an order pursuant to CPLR § 7511(b)(1)(iii) to vacate a No-Fault Master Arbitrator's decision, dated February 16, 2021, on the basis that the lower arbitrator exceeded his/her powers, alleging that the award was so imperfectly executed that a final award upon the subject matter submitted was not made, and that the Master Arbitrator erred in affirming the decision. For the reasons set forth below the petition is denied and respondents' cross-petition to confirm the Master Arbitrator's decision, is granted.

Background

An underlying accident occurred on March 10, 2019, involving a vehicle registered in New York State and insured by CWI. Joel Llivisaca ("Joel") was a restrained driver in a vehicle insured by CWI that was struck by another vehicle. Following the accident, Joel allegedly received healthcare services from respondent Comfort Choice Chiropractic P.C., which later submitted medical bills for reimbursement for alleged healthcare services provided to Joel. This matter then proceeded to arbitration on September 27, 2021, before Arbitrator Debbie Kotin Insdorf, Esq.

Arbitrator Debbie Kotin Insdorf, Esq. held that applicant is entitled to the full amount. Arbitrator Debbie Kotin Insdorf, Esq. stated, "I find the subject insurance policy has been exhausted and Applicant's claim for service performed 8/14/19 is denied. However, in the instance where the Respondent failed to properly delay the bill for service performed 8/06/19 the bill became overdue, prior to exhaustion of the policy limits. Applicant is therefore entitled to reimbursement despite Respondent having to pay in excess of the applicable policy limit." CWI then pursued Master Arbitration, on the grounds that the award of the No-Fault Arbitrator was not rationally based upon the evidence presented below and was arbitrary and capricious. The Master Arbitrator affirmed the lower arbitration award, holding that the arbitrator's review of the facts was not incorrect as a matter of law.

Petitioner now appeals to this Court and reasserts its position that the award should be vacated on the grounds that the lower arbitrator exceeded his power and the Master Arbitrator erred in affirming the award. Respondent cross-petitions for attorney's fees pursuant to 11 NYCRR 65-4.10(j)(4) and 11 NYCRR 65-4.10(j)(2)(i).

## **Discussion**

### **Applicable Law**

Pursuant to CPLR §7511(b)(1), an arbitration award can be vacated or modified on the grounds that:

- (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; or

(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.

To be upheld, the award must have evidentiary support or other basis in reason, appear in the record, and not be arbitrary or capricious (*Motor Veh. Acc. Indem. Corp. v Aetna Cas. & Sur. Co.*, 89 NY2d 214 [1996]; *Mount St. Mary's Hosp. v Catherwood*, 26 NY2d 493 [1970]).

### **Exceeding insurance policy limit**

With respect to arbitration proceedings concerning no-fault insurance benefits, "an arbitration award made in excess of the contractual limits of an insurance policy has been deemed an action in excess of authority" (*State Farm Ins. Co. v Credle*, 228 A.D.2d 191 [1st Dept 1996]). Such excess of authority constitutes grounds for vacatur of the award (See *Matter of Brijmohan v. State Farm Ins. Co.*, 92 N.Y.2d 821, 822 [NY Ct App, 1998]; *Countrywide Ins. Co. v Sawh*, 272 A.D.2d at 245 [1st Dept 2000]; 11 NYCRR 65-1.1). In this case, the contractual limit for the Personal Injury Protection (No Fault) coverage under the policy is \$50,000. Petitioner insists that this \$50,000 was mostly exhausted when the arbitration was commenced on September 29, 2021. Respondent contends, however, that Petitioner should have paid Respondent's claim after it was verified on September 4, 2019, two years prior to the arbitration and when the policy limit was still not yet exhausted.

In the situation of an insurance arbitration above the policy limit, this court has previously determined in a similar case, also involving CWI, that "the priority-of-payment rule was triggered when Petitioner received said response [...] At that point, Respondent's claim should have been paid ahead of other unpaid verified claims for services rendered or expenses incurred later than the services rendered by Respondent" and that "Given that the coverage for the subject policy in this case was not yet exhausted when Respondent's claim became due, the Lower Arbitrator's Award

[...] was not in excess of the contractual limits and, thus, the Lower Arbitrator did not exceed her power.”

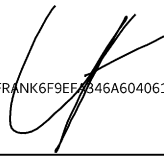
### Attorney’s fees

Respondent seeks an award of attorney’s fees pursuant to 11 N.Y.C.R.R. §65-4.10(j)(4). In support, Respondent submitted an affirmation detailing the hours spent by its counsel preparing the opposition to Petitioner’s petition and the cross-petition for confirmation (see NYSCEF doc No. 5). In the affirmation, Respondent’ counsel avers that they spent a total of 7.8 hours of legal work. Respondent seeks attorney’s fees in the amount of \$1,500 pursuant to counsel’s billing rate. The Court finds that 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 court 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.” (see also *Matter of GEICO Ins. Co. v. AAAMG Leasing Corp.*, 148 AD3d 703 [2d Dept 2017]). Respondent also seeks Attorney’s fees of \$195.00 pursuant to 11 NYCRRR 65-4.10(j)(2)(i). Thus, Respondent’s application for attorney’s fees in the total amount of \$1,695 is granted. Accordingly, it is hereby

ORDERED that the petition of Petitioner Country-Wide Insurance (Motion Seq. 001) is denied in its entirety; and the Award of the Lower Arbitrator, as affirmed by the Master Arbitrator, is confirmed; and it is further

ORDERED that Respondent’s cross-petition for attorney’s fees in the total amount of \$1,695 is granted; and it is further

ORDERED that the Clerk shall enter judgment accordingly.

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8/31/2022  
DATE

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LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE