

**Neurosurgical Assoc. P.C. v Emblemhealth Plan,  
Inc.**

2022 NY Slip Op 33246(U)

September 26, 2022

Supreme Court, New York County

Docket Number: Index No. 652892/2022

Judge: Erika M. Edwards

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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. ERIKA M. EDWARDS PART 10M

Justice

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NEUROSURGICAL ASSOCIATES P.C.,

Plaintiff,

- v -

EMBLEMHEALTH PLAN, INC. and EMBLEMHEALTH
INSURANCE COMPANY,

Defendants.

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INDEX NO. 652892/2022

MOTION DATE 08/12/2022

MOTION SEQ. NO. 001

DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10
were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Upon the foregoing documents and oral argument held before this court on September 26,
2022, for the reasons set forth on the record on September 26, 2022, and further discussed below,
the court denies Petitioner Neurosurgical Associates, P.C.'s ("Petitioner") order to show cause
(motion seq. 001), grants in part Respondents Emblemhealth Plan, Inc.'s and Emblemhealth
Insurance Company's ("Respondents") cross-motion to dismiss the petition, to the extent that the
court determines that the New York State Department of Financial Services should have been
named a party in this action in addition to Respondents, and the court dismisses Petitioner's
petition for Petitioner's failure to demonstrate its entitlement to the relief requested.

Petitioner filed a petition and moves by order to show cause to vacate the dismissals of
six IDR arbitrations, pursuant to CPLR 7511(b)1(iii), and to remand the arbitrations to the
original IDR entities. The arbitrators did not consider the merits of the arbitrations because the
arbitrators were advised by the New York State Department of Financial Services that the
matters were ineligible for arbitration because they were filed in June, 2022 for payments made
more than three years earlier. As such, all six arbitrations were filed beyond the newly-imposed

three-year Statute of Limitations established on April 9, 2022, which was included with the budget. Petitioner argues in substance that the New York State Department of Financial Services incorrectly applied the application of the Statute of Limitations retroactively, instead of prospectively.

Respondents oppose Petitioner's order to show cause and cross-move to dismiss the petition, pursuant to CPLR 3211(a)(7) and (10). They argue in substance that the petition fails to state a cause of action against them because they are not proper parties against whom relief can be obtained and that the court cannot proceed without Petitioner naming the New York State Department of Financial Services as a party to this action.

Petitioner opposes Respondent's cross-motion.

A party who participated in the arbitration may move to vacate or modify an arbitration award within ninety days of its delivery when "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" (CPLR 7511[b][1][iii]).

In addition to the reasons set forth on the record during oral argument on September 26, 2022, the court denies Petitioner's order to show cause, grants in part Respondent's cross-motion to dismiss Petitioner's petition to the extent that it determines that the New York State Department of Financial Services should have been named as a party to this action in addition to Respondents, and the court dismisses Petitioner's petition.

The court denies Petitioner's petition because Petitioner seeks to challenge the New York State Department of Financial Services' determination that the three-year Statute of Limitations applied as of the date that the budget was enacted, which was April 9, 2022, without naming the agency as a party to this action and without demonstrating its entitlement to the relief requested.

Since Petitioner filed all six arbitrations after April 9, 2022, and the payments were rendered over three years earlier, the New York State Department of Financial Services determined that the matters were beyond the expiration of the Statute of Limitations and that they were ineligible for arbitration. The arbitrators relied on this determination and all six arbitrations were dismissed.

As an initial matter, the court does not opine as to whether the New York State Department of Financial Services' correctly or incorrectly applied the Statute of Limitations. Since the agency was not named as a party to this action, it was deprived of the opportunity to be heard on this issue. The court determines that the essential issue in this matter is whether the arbitrators correctly dismissed the arbitrations because of their reliance upon the New York State Department of Financial Services' application of the newly-enacted Statute of Limitations. Since Petitioner failed to address this issue, Petitioner failed to demonstrate its entitlement to the relief requested in its order to show cause and petition.

The court determines that the arbitrators were entitled to, if not required to, rely on the New York State Department of Financial Services' determination that the matters were filed beyond the expiration of the Statute of Limitations and were therefore ineligible for arbitration.

Since the petition only challenges the New York State Department of Financial Services' determination, the New York State Department of Financial Services should have been named a party to this action. However, Respondents are also a proper party to this action since Petitioner seeks to vacate the dismissal of the arbitrations and remand them to the original IDR entities.

Furthermore, the court declines to grant Petitioner's alternative request to amend its order to show cause to add the New York State Department of Financial Services and the arbitration entities, as this relief would not cure the defect in the petition, which should have addressed the

arbitrators' reliance of the New York State Department of Financial Services' determination regarding the application of the Statute of Limitations.

Therefore, the court dismisses the petition.

The court has considered any additional arguments raised by the parties, but not specifically addressed herein, and the court denies all additional requests for relief not expressly granted herein.

As such, it is hereby

ORDERED that the court denies Petitioner Neurosurgical Associates, P.C.'s motion by order to show cause (motion seq. 001), grants in part Respondents Emblemhealth Plan, Inc.'s and Emblemhealth Insurance Company's cross-motion to dismiss the Petition, to the extent that the court determines that the New York State Department of Financial Services should have been named a party in this action in addition to Respondents Emblemhealth Plan, Inc. and Emblemhealth Insurance Company, and the court dismisses Petitioner's petition for Petitioner's failure to demonstrate its entitlement to the relief requested; and it is further

ORDERED that the court directs the Clerk of the Court to enter judgment in favor of Respondents Emblemhealth Plan, Inc. and Emblemhealth Insurance Company as against Petitioner Neurosurgical Associates, P.C.

This constitutes the decision and order of the court.

*Erika M. Edwards*  
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<u>9/26/2022</u> DATE					<hr/> ERIKA M. EDWARDS, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/>	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input type="checkbox"/>	REFERENCE