| **Complete Med. Care Servs. of NY, PC v American Family Connect Ins. Co.** |
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| 2022 NY Slip Op 33412(U) |
| October 3, 2022 |
| Supreme Court, New York County |
| Docket Number: Index No. 656924/2022 |
| Judge: Arlene Bluth |
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 14

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COMPLETE MEDICAL CARE SERVICES OF NY, PC D/B/A COMPLETE CARE AS ASSIGNEE OF CLAUDINE CAMERON-JOHNSON

Petitioner,

- v -

AMERICAN FAMILY CONNECT INSURANCE COMPANY F/K/A/ AMERIPRISE INSURANCE COMPANY,

Respondent.

**INDEX NO.** 656924/2022

**MOTION DATE** 09/23/2022

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON MOTION**

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HON. ARLENE P. BLUTH:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1- 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

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

The petition seeking to vacate the Arbitration Award dated March 27, 2022 is granted and, pursuant to petitioner's request, the matter is remanded to the lower Arbitrator for reconsideration of petitioner's claims.

**Background**

This is a dispute regarding examinations under oath ("EUOs") of a medical provider (not the injured party). Petitioner Complete Medical Care Services of New York, PC ("Petitioner") filed a No-Fault health benefits claim for the treatment and testing of Ms. Claudine Cameron-Johnson. Respondent denied the claim based on petitioner's failure to appear at two EUOs. Petitioner filed for arbitration to resolve the claims, asserting that petitioner received a letter from respondent that designated a date for an EUO, offered an adjournment if necessary, and reiterated that a change of date would be no problem. Petitioner replied to respondent's request for EUOs in a letter dated May 28, 2019, stating that the requested EUOs were unreasonable and

unnecessary, nonetheless offering a different date and time for the EUO. Respondent replied with a recognition that petitioner was refusing to comply with the EUO request. Petitioner sent a follow up letter dated June 18, 2019, stating that respondent mischaracterized petitioner's previous letter and requested approval for the No-Fault claims. No EUOs were performed, and respondent denied the claims. Petitioner brought this matter to arbitration.

The Arbitrator denied petitioner's claim, stating simply that she "found the evidence favors Respondent" (*see* NYSCEF Doc. No. 8 at 2). While the Arbitrator cited case law and relevant statutory guidelines, she failed to apply the relevant facts and failed to address the arguments presented by the parties. She failed to give any reason why calling the medical provider in for an EUO was appropriate in this case.

Petitioner appealed this decision to a Master Arbitrator, claiming that the lower Arbitrator's award failed to address petitioner's arguments or mention relevant factual material, resulting in an irrational decision. The Master Arbitrator affirmed the lower Arbitrator's decision, noting that "an Arbitrator is *not* required to explain his or her findings of fact…[a] failure to specifically mention any particular issue in an Arbitration Award does not mean that it was not 'considered'" (NYSCEF Doc. No. 9 at 4). The Master Arbitrator continued by stating "it is rational to believe that the lower Arbitrator, after reviewing [the letters] impliedly found that the three standards for determining whether a request for an Examination Under Oath is reasonable, (*that Applicant/Appellant quotes in one of my Awards as a lower Arbitrator*) were, in fact, satisfied," (NYSCEF Doc. No. 9 at 5 [emphasis added]). The Master Arbitrator found that there was no showing that the lower Arbitrator's findings were irrational.

Petitioner appeals to this Court seeking to vacate the arbitration award and remand the matter to the lower arbitrator for re-consideration of petitioner's arguments. Petitioner contends

the lower Arbitrator's decision was irrational and failed to address material and necessary issues such as the reasonableness for an EUO in this circumstance. Additionally, petitioner asserts the Master Arbitrator conducted a *de novo* review of the facts and the award contravenes public policy.

Respondent filed a cross-petition seeking confirmation of the Arbitration Award. Respondent contends the award is rational, that petitioner failed to confirm a new date for the EUO per the instructions listed in the initial letter from respondent, and that the Arbitrator resolved all controversies and issues related to petitioner's claims.

**Discussion**

"CPLR 7511 provides just four grounds for vacating an arbitration award, including that the arbitrator exceeded his power (CPLR 7511[b][1][iii]), which 'occurs only where the arbitrator's award violates a strong public policy, is irrational or clearly exceeds a specifically enumerated limitation on the arbitrator's power. Mere errors of fact or law are insufficient to vacate an arbitral award. Courts are obligated to give deference to the decision of the arbitrator, even if the arbitrator misapplied the substantive law in the area of the contract'" (*NRT New York LLC v Spell*, 166 AD3d 438, 438-39, 88 NYS3d 34 [1st Dept 2018] [internal quotations and citations omitted]).

Moreover, CPLR 7511 "includes review of whether the award is supported by evidence or other basis in reason"(*Petrofsky v Allstate Ins. Co.*, 54 NY2d 2017, 211, 445 NYS2d 77 [1981] [quoting *Mount St. Mary's Hosp. of Niagara Falls v Catherwood*, 26 NY2d 493, 508, 311 NYS2d 863 [1970]]). The test is "whether the evidence is sufficient, as a matter of law, to support the determination of the arbitrator, is rational" (*Matter of Miller v Elrac, LLC*, 170 AD3d 436, 437, 95 NYS3d 172 [1st Dept 2019]).

This Court finds that the lower Arbitrator's decision, which was devoid of any reason as to why it was appropriate to bring this provider in for an EUO, was irrational. The lower Arbitrator was presented with the facts and heard oral argument relating to the issues at hand, but this Court is unable to assess how the lower Arbitrator arrived at her decision. As to her findings, the lower Arbitrator stated that "[r]espondent has established that the proposed deponent was duly notified of the EUOs yet failed to appear for same," (NYSCEF Doc. No. 8 at 2). The lower Arbitrator declined to engage in an analysis of petitioner's arguments other than listing black letter law that does not weigh the facts of the instant matter. The lower arbitrator's decision does not contain any explanation for why she rejected petitioner's arguments that the EUO requests were unreasonable. Of course, that is the central issue in this dispute—whether respondent established a reasonable basis for demanding an EUO of petitioner, a medical provider. Without any application of the facts to the law cited by the lower arbitrator, the determination was arbitrary.

The Master Arbitrator's decision makes this point. The Master Arbitrator stated that the EUOs satisfied the three standards for determining reasonableness because "the insurer had a reasonable basis for justifying the need for the information…the Applicant/Appellant was an appropriate source of the information…and that the request was not abusive or considered to be constructive harassment" (NYSCEF Doc. No. 9 at 5). Unfortunately, it was not the job of the Master Arbitrator to opine or speculate as to the basis for the lower arbitrator's decision. Nor is it the role of this Court to engage in such an analysis. It was the job of the lower arbitrator to give her reasons, which she did not do. It is not up to anyone else to infer her reasoning.

Moreover, the Master Arbitrator's decision constituted a de novo review of the initial arbitration decision, something that the Master Arbitrator acknowledged that he could not do.

While it is true, as the Master Arbitrator observed, that the lower arbitrator need not explain or justify each of her findings, that does not mean that she can issue conclusory decisions without giving *any* reason. Although a lower arbitrator certainly does not have to address every conceivable argument when issuing a decision, the final determination must, at the very least, offer an explanation. That explanation need not be a thousand-page treatise, but the Court cannot ignore the paucity of the justification offered here. The lower arbitrator found that "Upon careful consideration of the record and oral argument offered at the hearing, I find that the evidence favors Respondent, as to matters of law and fact. Respondent has established that the proposed deponent was duly notified of the EUOs yet failed to appear for same" (NYSCEF Doc. No. 8 at 2). That wholly conclusory decision is irrational – it gives no rationale.

If the issue was whether petitioner was notified of the EUO request, then the arbitrator's decision may have been sufficient. However, that was not the issue here: in this case, a medical provider was called in for an EUO and claimed that such a request was unreasonable and unnecessary, and the arbitrator ignored that argument. Denying an argument without even a minimal explanation is not rational. Citing law without applying the relevant facts to it is not sustainable upon Article 75 review.

Accordingly, it is hereby

ORDERED that the petition seeking vacatur of the No-Fault Arbitration Award dated March 27, 2022 is granted and the matter is remanded to the lower arbitrator for reconsideration of petitioner's arguments and the Clerk is directed to enter judgment accordingly in favor of

petitioner and against respondent along with costs and disbursements upon presentation of proper papers therefor; and it is further

ORDERED that respondent's cross-petition to confirm the arbitration awards is denied.

10/3/2022
DATE

ARLENE BLUTH, J.S.C.

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| CHECK ONE: | X | CASE DISPOSED | | | NON-FINAL DISPOSITION | | |
| | X | GRANTED | | DENIED | GRANTED IN PART | | OTHER |
| APPLICATION: | | SETTLE ORDER | | | SUBMIT ORDER | | |
| CHECK IF APPROPRIATE: | | INCLUDES TRANSFER/REASSIGN | | | FIDUCIARY APPOINTMENT | | REFERENCE |