

**American Tr. Ins. Co. v Allbody Healing Supplies
LLC**

2022 NY Slip Op 34021(U)

October 23, 2022

Supreme Court, Kings County

Docket Number: Index No. 514081/2022

Judge: Francois A. Rivera

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the day 23rd of October 2022

HONORABLE FRANCOIS A. RIVERA

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AMERICAN TRANSIT INSURANCE COMPANY

Petitioner,

DECISION & ORDER
Index No. 514081/2022

- against -

ALLBODY HEALING SUPPLIES LLC, A/A/O IVAN AMANCHA

Respondent

-----X

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of petition and petition filed on May 13, 2022, by American Transit Insurance Company (hereinafter petitioner) pursuant to CPLR Article 75, seeking to vacate an award of a master arbitrator (AAA Assessment # 99-21-1191-0090) which affirmed, in its entirety, an award of a lower arbitrator in the amount of \$3,169.08 in favor of the respondent Allbody Healing Supplies LLC, a/a/o Ivan Amancha.

- Notice of petition
- Petition
- Exhibits A- D
- Answer

BACKGROUND

On May 13, 2022, the petitioner commenced the instant special proceeding pursuant to CPLR Article 75 to vacate an award of a master arbitrator in favor of the respondent Allbody Healing Supplies LLC, a/a/o Ivan Amancha (hereinafter respondent).

On June 5, 2022, the respondent interposed an answer.

The petition alleges the following salient facts. The petitioner issued a New York policy of insurance to Ivan Amancha (hereinafter Amancha) which included a no-fault endorsement. The no-fault endorsement provided coverage to any eligible injured person for all necessary medical expenses, lost wages and other expenses resulting from a motor vehicle accident up to the minimum statutory amount of \$50,000.00. On October 30, 2018, while the policy was in effect, Amancha was injured in a motor vehicle accident (hereinafter the subject accident). Amancha put the petitioner on notice of the subject accident and the injuries that it caused. Amancha sought medical treatment for those injuries and the respondent was one of the medical providers that allegedly rendered treatment to him. Amancha assigned the right to collect no-fault benefits to the respondent in exchange for the medical treatment allegedly received.

The respondent submitted no-fault claims to the petitioner seeking reimbursement for medical services rendered to Amancha from November 18 through December 29, 2019, in the total amount of \$3,169.08. The petitioner did not pay and denied the claim on the basis that the services rendered were not medically necessary or causally related to the subject accident.

The respondent initiated an arbitration claiming entitlement to \$3,169.08. The arbitration matter was decided by Arbitrator Michael Rosenberger, Esq. (hereinafter the no-fault arbitrator) who awarded the respondent the full amount claimed of \$3,169.08. Thereafter, the petitioner filed for Master Arbitration. Master Arbitrator Hon. Alfred J. Weiner (Ret.) (hereinafter the master arbitrator) upheld the lower arbitration award in its entirety. The petitioner contends that the arbitration award was arbitrary and capricious,

irrational and without a plausible basis. The petitioner contends that the claim was properly and timely denied for lack of medical necessity and, also, because the petitioner had a founded belief that the alleged injuries were not causally related to the subject motor vehicle accident.

On June 5, 2022. The respondent filed an answer which plead forty affirmative defenses.

LAW AND APPLICATION

A court reviewing the award of a master arbitrator is limited to the grounds set forth in CPLR Article 75, which include, in this compulsory arbitration, the question of whether the determination had evidentiary support, was rational, or had a plausible basis (*see Matter of Petrofsky [Allstate Ins. Co.]*, 54 NY2d 207, 212 [1981]). Notably, the master arbitrator's review power is broader than that of the courts' because it includes the power to review for errors of law (*see id.* at 211–212; 11 NYCRR 65–4.10[a][4]). In contrast, the courts generally will not vacate an arbitrator's award where the error claimed is the incorrect application of a rule of substantive law, unless it is so irrational as to require vacatur (*Matter of Smith [Firemen's Ins. Co.]*, 55 NY2d 224, 232 [1982]; *see also Matter of Liberty Mut. Ins. Co. v. Spine Americare Med.*, 294 AD2d 574, 576 [2nd Dept 2002]).

The petitioner's evidentiary submissions include the no-fault arbitrator's award and the master arbitrator's award. The no-fault arbitrator set forth the following in the award letter. The no-fault arbitrator found that Amancha was involved in a motor vehicle accident on October 30, 2018, that following the accident Amancha suffered injuries for

which Amancha sought treatment. Thereafter, Amancha was prescribed a continuous passive motion machine (CPM), which was denied based upon a peer review of Matthew Skolnick, MD. The no-fault arbitrator further found that the surgery undergone by Amancha was already deemed to be medically necessary and was causally related by Arbitrator Papadakis in *Iconic Wellness Surgical Services, LLC v American Transit Ins. Co.*, AAA Case No.: 17-20-1177-5661. Therefore, the sole issue pertained to the medical necessity of the device itself.

In support of its contention that the medical device was not medically necessary, the petitioner relied upon the peer review report of Matthew Skolnick, MD. The no-fault arbitrator found that the peer review was conclusory, riddled with bald assertions and insufficient to support a lack of medical necessity defense. The peer review report failed to form a nexus between Amancha's injury and the contention that the medical device was not medically necessary. The no-fault arbitrator determined that the petitioner failed to meet the burden of production in support of its lack of medical necessity defense and, accordingly, issued an award in favor of the respondent in the amount of \$3,169.08.

The master arbitrator reviewed the record and award of the no-fault arbitrator and stated the following findings. The award by the no-fault arbitrator did not violate the regulations. It was within the province of the no-fault arbitrator to determine what evidence to accept or reject and what inferences should be drawn based on the evidence. Upon reviewing the record and evidence submitted, the master arbitrator did not find the no-fault arbitrator's interpretation of the evidence and applicable law pertaining to this

dispute to be arbitrary, capricious, or contrary to law. Consequently, the master arbitrator upheld the award to the respondent in the amount of \$3,169.08.

The instant petition is a special proceeding. The procedure for special proceedings contemplates that the petition will be accompanied by affidavits demonstrating the evidentiary grounds for the relief requested (*see* CPLR 403[a]). It is settled that a special proceeding is subject to the same standards and rules of decision as apply on a motion for summary judgment, requiring the court to decide the matter upon the pleadings, papers, and admissions to the extent that no triable issues of fact are raised (CPLR 409 [b]; *Saadia Safdi Realty, LLC v. Melvin Press*, 207 AD3d 633, 635 [2nd Dept 2022]; citing *Matter of Arben Corp. v. Durastone, LLC*, 186 AD3d 599 at 600 [2nd Dept 2020]).

The respondent interposed an answer to the petition asserting forty denominated affirmative defenses. The evidentiary submissions and legal reasoning proffered by the petitioner did not make a prima facie showing that the no-fault arbitrator's award or the master arbitrator's award was either arbitrary or capricious. To the contrary, the petitioner's evidentiary submissions established that the no-fault arbitrator's award and the master arbitrator's affirmance of the award was based on sound and well-reasoned analysis of the evidence submitted and upon the proper application of the pertinent laws and regulations. Accordingly, it was unnecessary to address the admissions, denials and affirmative defenses asserted in the respondent's answer (*Winegrad v New York University Medical Center*, 64 NY2d 851 [1985]).

CONCLUSION

The petition by petitioner American Transit Insurance Company for an order pursuant to Article 75 of the CPLR vacating an Arbitration Award and a Master Arbitration is denied and the petition is dismissed.

The foregoing constitutes the decision and order of this Court.

ENTER:

Francis A. Rivera x

J.S.C.

**HON. FRANCOIS A. RIVERA
J.S.C.**