

**American Tr. Ins. Co. v Safe Anesthesia & Pain Servs.,  
LLC**

2023 NY Slip Op 31390(U)

April 28, 2023

Supreme Court, New York County

Docket Number: Index No. 153920/2020

Judge: Sabrina Kraus

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. SABRINA KRAUS PART 57TR**

*Justice*

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AMERICAN TRANSIT INSURANCE COMPANY,  
Plaintiff,

INDEX NO. 153920/2020

MOTION DATE 05/29/2023

MOTION SEQ. NO. 001

- v -

SAFE ANESTHESIA AND PAIN SERVICES,  
LLC, AMERICAN AMBULATORY SURGERY INC. D/B/A  
SURGERY CENTER OF ORADELL, SHAHID MIAN M.D.  
P.C. A/A/O TYREEM ANDREWS

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26

were read on this motion to/for DISMISSAL.

**BACKGROUND**

Plaintiff initiated this action to adjudicate a no-fault dispute *de novo* pursuant to §5106 of the Insurance Law.

Tyreem Andrews (Assignor) was allegedly involved in an accident in New York on October 16, 2016. Defendant American Ambulatory provided facility services to the assignor on February 3, 2017, relating to an arthroscopic surgery of Assignor’s left knee performed by Defendant Mian at Defendant American Ambulatory, an Ambulatory Surgery Center. Defendant Safe Anesthesia provided anesthesia services for the surgery.

Plaintiff denied the claims-based lack of medical necessity and the fees not being in accordance with the fee schedule. The Defendants then sought arbitration. Defendant American Ambulatory sought arbitration in the amount of \$11,993.13 for the facility services connected to the abovementioned knee surgery. Defendant Safe Anesthesia sought arbitration in the amount of

\$1,000 for the anesthesia services provided in connection with the surgery. Defendant Mian sought arbitration in the amount of \$15,729.77 for the surgical services provided in the surgery.

The arbitrator found in favor of defendants based upon medical necessity. Defendant Mian was awarded \$8,020.45 for surgery the Assignor's knee. Defendant American Ambulatory was awarded \$7,995.42 for the facility services provided in connection with to the abovementioned knee surgery. Defendant Safe Anesthesia was awarded \$691.76 for the anesthesia services connected to the same surgery.

Plaintiff thereafter sought review by a Master Arbitrator on all three awards. On January 24, 2020, the master arbitrator rendered an award affirming the lower arbitrator's award in favor of the Defendant American Ambulatory the amount of \$7,995.42. On February 3, 2020, the same master arbitrator rendered an award affirming the lower arbitrator's award in favor of the Defendant Safe Anesthesia the amount of \$691.76. On February 26, 2020, a master arbitrator rendered an award affirming the lower arbitrator's award in favor of the Defendant Mian in the amount of \$8,020.45.

The summons and complaint seeking *de novo* review were filed on June 4, 2020.

Safe Anesthesia and Pain Services and American Ambulatory Surgery Scenter filed an answer with counterclaims on July 9, 2020.

Dr. Shahid Mian filed an answer with counterclaims on August 27, 2020.

### **THE PENDING MOTION**

On February 8, 2023, Safe Anesthesia and Pain Services an American Ambulatory Surgery moved to dismiss the complaint for failing to state a cause of action, lack of subject matter jurisdiction and res judicata/collateral estoppel.

On March 30, 2023, Dr. Mian moved for the same relief.

Plaintiff submitted opposition and Safe Anesthesia and American Ambulatory filed reply and on March 30, 2023, the motion was fully submitted and the court reserved decision.

***The motion to dismiss is granted in part in favor of Safe Anesthesia and Pain Services LLC***

Insurance Law §5106( c) provides, in pertinent part

The award of a master arbitrator shall be binding except for the grounds for review set forth in article seventy-five of the civil practice law and rules, and provided further that where the amount of such master arbitrator's award is five thousand dollars or greater, exclusive of interest and attorney's fees, the insurer or the claimant may institute a court action to adjudicate the dispute *de novo*.

The amount at issue here, as to the claim against Safe Anesthesia and Pain Services is \$691.76, far less than the \$5000 allowed under Insurance Law §5106 (c). The Appellate Division, First Department has held, in an analogous action, that services that were separate and distinct and billed separately cannot be combined to meet the \$5000 threshold, *American Tr. Ins. Co. v. Health Plus Surgery Ctr., LLC* 192 AD3d 497 (1st Dept. 2021). Plaintiff does not dispute that the amount awarded by the lower arbitrator and affirmed by the master arbitrator falls below that which is allowed de novo review. Based on the forgoing, the motion to dismiss for lack of subject matter jurisdiction is granted as to Safe Anesthesia and Pain Services.

***The motion and cross motion to dismiss is denied as to American Ambulatory and Dr. Shahid Mian***

Defendants American Ambulatory and Dr. Mian argue that as the award against Safe Anesthesia and Pain Services must be dismissed, as it is below the \$5000 threshold, the award becomes collateral estoppel because the time to file a Petition as to the arbitration award has since expired, and therefore, the entire complaint must be dismissed.

Plaintiff relies on numerous lower court decisions, *Global Liberty Ins. Co. v. Jonathan Lewin, M.D., P.C.*, 56 Misc 3d 1207(A) (Sup. Ct. Nassau County 2017); *American Transit*

*Insurance Company v. McCulloch Orthopaedic Surgical Services, PLLC a/a/o Ana Rodriguez*, Sup Ct, Nassau County, August 21, 2018, Sher, J. index No. 613471/17, which hold that when *de novo* review is requested by a Plaintiff, the defense of collateral estoppel is no longer available.

All of these cases, as well as Plaintiff herein, rely on the Court of Appeals decision in *Matter of Greenberg [Ryder Truck Rental]*, 70 NY2d 573, 576-577 [1987]), which states, in pertinent part, “[t]he natural and plain words of the statute, ... require that if the monetary predicate is satisfied, the entire subject matter in controversy, including both the liability and benefits components, is subject to plenary judicial determination.”

The court agrees that once a *de novo* action is commenced there is no longer an award entitled to collateral estoppel. A *de novo* action means that the issues are litigated from the beginning and the prior ruling no longer exists. There is nothing to give collateral estoppel effect to.

Wherefore, it is hereby

ORDERED Defendant Safe Anesthesia and Pain Services LLC’s motion to dismiss is granted; and it is further

ORDERED Defendants Mian and American Ambulatory’s motion to dismiss is denied; and it is further

ORDERED that, within 20 days from entry of this order, movant shall serve a copy of this order with notice of entry on plaintiff and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119) who are directed to mark the court’s records to reflect the change in the caption removing Safe Anesthesia and Pain Services LLC as a defendant herein; and it is further

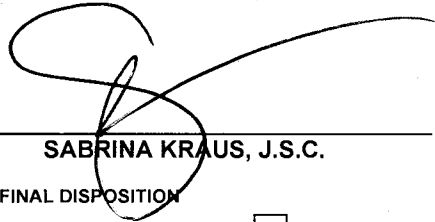
ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for*

*Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

This constitutes the decision and order of the court.

4/28/2023

DATE



SABRINA KRAUS, 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