

**Matter of Commissioners of the State Ins. Fund v New
York City Off. of the Comptroller**

2023 NY Slip Op 34020(U)

November 13, 2023

Supreme Court, New York County

Docket Number: Index No. 451127/2023

Judge: John J. Kelley

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

PRESENT: HON. JOHN J. KELLEY PART 56M

Justice

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In the Matter of

COMMISSIONERS OF THE STATE INSURANCE FUND,
as subrogee of DRAGONETTI BROTHERS LANDSCAPING
NURSERY & FLORIST, INC.,

Petitioner,

- v -

NEW YORK CITY OFFICE OF THE COMPTROLLER,

Respondent.
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INDEX NO. 451127/2023

MOTION DATE 08/08/2023

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7 were read on this motion to/for CONFIRM/DISAPPROVE AWARD/REPORT.

The Commissioners of the State Insurance Fund (SIF), as subrogee of Dragonetti Brothers Landscaping Nursery & Florist, Inc. (Dragonetti), petitions pursuant to CPLR 7510 to confirm an arbitration award dated May 5, 2022, made by an arbitrator acting under the auspices of Arbitration Forums, Inc. (AFI), and pursuant to CPLR 7514 to direct the entry of judgment thereon. The respondent, New York City Office of the Comptroller, does not oppose the motion. The petition is granted, the award rendered under AFI Docket No. I068-11764-21-00 is confirmed, and SIF is entitled to enter a money judgment against the City of New York in the principal sum of \$24,833.92, plus statutory interest from May 5, 2022.

SIF is Dragonetti’s workers’ compensation insurer and, thus, is responsible for the initial payment of Workers’ Compensation benefits in lieu of no-fault benefits with respect to any of Dragonetti’s employees who are injured in motor vehicles owned by Dragonetti and operated in the course of its business. The respondent is the self-insurer of a 2008 Ford Utility vehicle that is registered to the New York City Police Department (NYPD). On October 18, 2017, while

operating the 2008 Ford Utility vehicle on behalf of the NYPD, Bruce M. Butt caused that vehicle to strike the rear of a vehicle owned by Dragonetti, in which Dragonetti's employee, Warren Monk, was a passenger. Monk, alleging that he was injured, made claim upon SIF for Workers' Compensation benefits in lieu of first-party no-fault benefits (see *A.I. Transp. v New York State Ins. Fund*, 301 AD2d 380, 380 [1st Dept 2003]; *Arvatz v Empire Mut. Ins. Co.*, 171 AD2d 262, 268 [1st Dept 1991]; Insurance Law §§ 5102 [a], [b]; 5103 [a]; Workers' Compensation Law § 2[3]). SIF paid claims totaling \$24,833.92 to Monk or on his behalf.

Inasmuch as the vehicle that the respondent had maintained as a self-insured vehicle was a "motor vehicle weighing more than six thousand five hundred pounds unloaded" (Insurance Law § 5105[a]), SIF was entitled to seek a personal injury protection (PIP) or Workers' Compensation "loss transfer" from the respondent to reimburse it for the benefits that it had paid out to Monk or had paid out on his behalf (see *A.I. Transp. v New York State Ins. Fund*, 301 AD2d at 380). To obtain this loss transfer, SIF was required to establish that Butt, as the operator of the vehicle that was self-insured by the respondent, was at fault in the happening of the accident. Insurance Law § 5105(b) provides that, where an insurer seeks to recover first-party benefits/PIP or Workers' Compensation loss transfer from the "insurer of any other covered person" on the ground that the other covered person was at fault in the happening of the accident, "[t]he sole remedy . . . shall be the submission of the controversy to mandatory arbitration pursuant to procedures promulgated or approved by the superintendent" of the New York State Department of Financial Services. Pursuant to those regulations, AFI has been designated as the exclusive forum for resolution of no-fault related arbitration matters (see 11 NYCRR 65.10). SIF thus demanded inter-insurer arbitration with the City of New York Office of the Comptroller before AFI.

In the May 5, 2022 arbitration award, an arbitrator acting under the auspices of AFI found Monk's description of the accident to be credible, found in favor of SIF, and concluded

that Butt was at 100% at fault in the happening of the subject accident. The arbitrator thus determined that the respondent was obligated to pay SIF the sum of \$24,833.92.

Pursuant to CPLR 7510, the court “shall confirm an [arbitration] award upon application of a party made within one year after its delivery to him [or her] unless the award is vacated or modified upon a ground specified in section 7511.” The grounds specified in CPLR 7511 are exclusive (see *Bernstein Family Ltd. Partnership v Sovereign Partners, L.P.*, 66 AD3d 201 [1st Dept 2009]) and it is a “well-established rule that an arbitrator’s rulings, unlike a trial court’s, are largely unreviewable” (*Matter of Falzone v New York Cent. Mut. Fire Ins. Co.*, 15 NY3d 530, 534 [2013]). The instant proceeding to confirm the arbitration award was timely commenced on April 20, 2023 (see CPLR 304[a]). SIF contends that the award was proper in all respects and that no grounds exist for modification or vacatur. The court agrees, and concludes that SIF is entitled both to the confirmation of the award and the entry of a money judgment in the sum of \$24,833.92. The money judgment must bear interest from the date of the arbitration award, that is, from May 5, 2022 (see CPLR 5002; *Board of Educ. of Cent. School Dist. No. 1 of Towns of Niagara, Wheatfield, Lewiston & Cambria v Niagara-Wheatfield Teachers Assn.*, 46 NY2d 553, 558 [1979]; *Dermigny v Harper*, 127 AD3d 685, 686 [2d Dept 2015]; *Matter of Levin & Glasser, P.C. v Kenmore Prop., LLC*, 70 AD3d 443, 446 [1st Dept 2010]; *Matter of Gruberg v Cortell Group, Inc.*, 143 AD2d 39, 39 [1st Dept 1988]).

Inasmuch as money judgment against a New York City agency such as the Office of the Comptroller may only be entered against the City of New York (NY City Charter § 396), the court directs that the money judgment be entered against the City of New York,

Accordingly, it is

ADJUDGED that the petition is granted, without opposition, and the arbitration award rendered in the matter entitled *The Commissioners of the State Insurance Fund, as subrogee of Dragonetti Brothers Landscaping Nursery & Florist, Inc. v New York City Office of the*

Comptroller, Arbitration Forums, Inc., Docket Number 1068-11764-21-00, dated May 5, 2022, be, and hereby is, confirmed; and it is further,

ORDERED that the Clerk of the court shall enter a money judgment in favor of The Commissioners of the State Insurance Fund, as subrogee of Dragonetti Brothers Landscaping Nursery & Florist, Inc., and against the City of New York in the principal sum of \$24,833.92, with statutory interest at 9% per annum from May 5, 2022.

This constitutes the Decision, Order, and Judgment of the court.

11/13/2023
DATE


JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: