

American Tr. Ins. Co. v YSC Trinity Acupuncture PC

2023 NY Slip Op 34617(U)

November 1, 2023

Supreme Court, Kings County

Docket Number: Index No. 502863/2022

Judge: Rupert V. Barry

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.

Index No.: 502863/2022

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 13

-----X
AMERICAN TRANSIT INSURANCE COMPANY,

Petitioner(s),

Cal. No.: 6 (Motion Seq. 3)
Cal. No.: 9 (Motion Seq. 5)

Against

YSC TRINITY ACUPUNTURE PC, A/A/O SHABA
HILL,

Index No.: 502863/2022

Respondents.
-----X

DECISION & ORDER

Recitation, as required by CPLR 2219(a), of the papers considered in the review of Petitioner’s petition to modify the judgment and for a satisfaction of judgment, or in the alternative partial satisfaction of judgment, and cross motion of Respondent for attorney fees: NYSCEF Doc. Nos.: [mt. seq. # 3]: 60 – 68; 77. [mt. seq. # 5]: 73 – 75; 78, 80.

The issues in the above entitled action having duly come before this Court by order to show cause of Petitioner to modify the judgment and for a satisfaction of judgment, or in the alternative partial satisfaction of judgment, and cross motion of Respondent for attorney fees. Upon due consideration of the papers filed in regard to these applications, this Court finds the following:

Background:

This action was brought by Ethan Rothschild, Esq. on January 30, 2022, pursuant to CPLR 7511 to vacate the underlying Master Arbitration Award of Burt Feilich, Esq., which upheld the lower arbitration award of Nada Saxon, Esq. in the amount of \$2,400.86 (the “Award”).

The underlying arbitration matter with AAA No. 99-20-1184-4625 is a no-fault action for unpaid medical bills.

On March 25, 2022, Olga Skylut, Esq. interposed an Answer with Cross Petition requesting the arbitration Award be confirmed.

Index No.: 502863/2022

On April 1, 2022, Larkin Farrell, LLC was substituted as counsel for Ethan Rothschild, Esq. A consent to change attorney was efiled.

On June 13, 2022, the Court denied the underlying Petition to Vacate the Award and granted the Cross Petition to Confirm.

On June 29, 2022, Olga Skylut, Esq. served a Notice of Entry.

On July 1, 2022, and July 11, 2022, Petitioner made payments to Olga Skylut, Esq. in full satisfaction of the Award in the total amount of \$5196.42, which included accrued interest. Petitioner produced the checks in support of these payments at Exhibit A. Respondent does not contest that the payments were made.

On October 30, 2022, almost 4 months after the judgment had been paid in full to Olga Skylut, Esq., an attorney who had not yet appeared in the action, Roman Kravchenko, Esq., submitted a proposed judgment be entered against Petitioner in the amount of \$6353.66.

This proposed judgment submitted on October 30, 2022, did not account for the payments that had already been made on July 1, 2022, and July 11, 2022, to satisfy the Award.

The judgment was entered on November 22, 2022. Roman Kravchenko, Esq. served a Notice of Entry of the judgment on January 6, 2023.

The Award, plus interest that forms the basis of the judgment had been paid prior to the entry of judgment.

The reason for the difference in the amount of the payments (\$5196.42) and the amount of the judgment (\$6353.66) is due to the fact that the Judgment Clerk calculated interest through the date the judgment because the clerk was unaware that the decision had been paid 4 months prior.

Petitioner overpaid the judgment as of the date the payment was issued.

Index No.: 502863/2022

The underlying arbitration was filed on November 9, 2020. The interest was paid on July 1, 2022. There are 599 days from November 9, 2020, to July 1, 2022. 11 NYCRR 65-3.9 provides that interest shall be calculated at 2% per month paid using a 30 day month. 599 days divided by 30 day months equals 19.96 months. The awarded principal of \$2400.86 times .02 = \$48.017. The number of months (19.96) times the interest per month (48.017) equals \$958.42. Petitioner paid \$958.66 in interest, slightly more than what was owed. The judgment clerk calculated the interest to be \$1172.80, \$214.38 more than what was owed.

Another reason for the discrepancy in the amount of the judgment and what was owed was because the Judgment Clerk entered the attorney fee for Respondent as \$1360.00 in error. 11 NYCRR 65-4.6(e) provides that the attorney fee shall equal 20% of the sum of the principal and interest owed, subject to a *maximum* of \$1360.00. Respondent was entitled to an attorney fee of \$671.86 ($\$2400.86 + \$958.42 = \$3359.28 \times .2 = \671.86). The Judgment Clerk gave Respondent the maximum rather than the 20% owed. As such, the attorney fees were overstated by \$688.14.

The Judgment Clerk also awarded the Respondent \$250.00 costs in error. The \$250.00 was to act as reimbursement for the court costs. Respondent did not pay the filing fees. Petitioner filed the Petition and incurred the expense.

The amounts owed to Counsel pursuant to the Judgment, less the overstated interest and clerical error, equal \$671.86 (regular 20% no-fault attorney fees) plus \$40.00 (arbitration filing fee) plus \$130.00 (additional attorney fees awarded by the Master Arbitrator) plus \$1000 (additional attorney fees awarded for the petition) = \$1841.86. Petitioner paid Counsel \$1841.90.

Respondent filed a separate Order to Show Cause to modify the judgment returnable the same date and heard with the within application to quash the subpoena. That application was

Index No.: 502863/2022

granted by separate order. As such, the judgment, upon modification to the correct amounts owed, has been fully satisfied.

Petitioner requested Respondent provide a satisfaction of judgment. Rather than provide said satisfaction, or even credit the payments made, Respondent refused and instead referred the full judgment to the Marshal for collection.

Holding:

CPLR 5019 (a) provides:

(a) Validity and correction of judgment or order. A judgment or order shall not be stayed, impaired or affected by any mistake, defect or irregularity in the papers or procedures in the action not affecting a substantial right of a party. A trial or an appellate court may require the mistake, defect or irregularity to be cured.

The Judgment Clerk 1) overstated the amount of interest owed because the Clerk was not aware that the payments were already issued, 2) erred in awarding Respondent the maximum \$1360.00 attorney fee and 3) erred in awarding Respondent \$250.00 for costs and disbursements that were not incurred by Respondent.

As such, the judgment should be modified to reflect the correct amount owed: \$5201.38.

Furthermore, CPLR 5021(a), (a)(2) provides:

(a) Entry upon satisfaction-piece, court order, deposit into court, discharge of compounding joint debtor. The clerk of the court in which the judgment was entered or, in the case of a judgment of a court other than the supreme, county or a family court which has been docketed by the clerk of the county in which it was entered, such county clerk, shall make an entry of the satisfaction or partial satisfaction on the docket of the judgment upon:

2. the order of the court, made upon motion with such notice to other persons as the court may require, when the judgment has been wholly or partially satisfied but the judgment debtor cannot furnish the clerk with a satisfaction-piece or partial satisfaction-piece; or....

Index No.: 502863/2022

The judgment has been satisfied. Petitioner owed Respondent \$5201.38 pursuant to the modifications requested above. Petitioner paid Respondent \$5201.42, .04 more than what was owed. Accordingly, it is

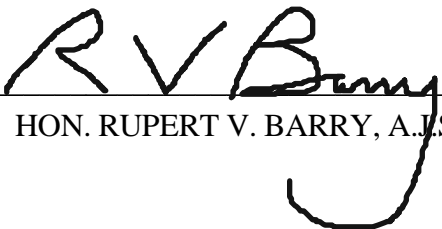
ORDERED, that Petitioners' Order to Show Cause for a satisfaction of judgment (Motion Seq. No.: 3) is hereby GRANTED, and the clerk of the Court is hereby ordered to enter a full Satisfaction of Judgment. It is further

ORDERED, that Respondent's cross-motion for attorney fees (Motion Seq. No.: 5) is DENIED. .

This constitutes the decision and order of this Court.

Dated: November 1, 2023

ENTER:


HON. RUPERT V. BARRY, A.J.S.C.